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WELSH STATUTORY INSTRUMENTS

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**2010 No. 2136 (W.192)**

**TRANSPORT AND WORKS, WALES**

**The Llangollen and Corwen Railway Order 2010**

*Made* - - - - 25 August 2010

*Coming into force* - - 27 August 2010

An application has been made to the Welsh Ministers in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006(1) for an Order under sections 1 and 5 of the Transport and Works Act 1992(2) (“the 1992 Act”).

Objections to that application have been withdrawn.

The Welsh Ministers, having considered the report of the person asked by them to provide an appraisal of the application have determined to make an Order giving effect to the proposals comprised in the application with modifications which in the opinion of the Welsh Ministers do not make any substantial change in the proposals.

Notice of the Welsh Ministers' determination was published in the London Gazette on 24 August 2010.

Accordingly, the Welsh Ministers, in exercise of the powers conferred by sections 1 and 5 of, and paragraphs 1, 2, 5, 7, 8, 11 to 13 and 15 to 17 of Schedule 1 to, the 1992 Act make the following Order:—

**PART 1**

**PRELIMINARY**

**Citation and commencement**

1.—(1) The title of this Order is the Llangollen and Corwen Railway Order 2010 and it comes into force on 27 August 2010.

(2) The Llangollen and Corwen Light Railway Order 1984(3) and this Order may be cited together as the Llangollen and Corwen Railway Orders 1984 and 2010.

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(1) S.I. 2006/1466.

(2) 1992 c. 42. As amended by S.I. 1995/1541, S.I. 1998/2226, S.I. 2000/3199 and S.I. 2006/958.

(3) S.I. 1984/558.

## Interpretation

### 2.—(1) In this Order—

“the 1961 Act” (“*Deddf 1961*”) means the Land Compensation Act 1961<sup>(4)</sup>

“the 1990 Act” (“*Deddf 1990*”) means the Town and Country Planning Act 1990<sup>(5)</sup>;

“address” (“*cyfeiriad*”) includes any number or address used for the purposes of electronic transmission;

“authorised works” (“*gweithfeydd awdurdodedig*”) means the scheduled work and any other works authorised by this Order;

“building” (“*adeilad*”) includes any structure or erection or any part of a building, structure or erection;

“electronic transmission” (“*trosglwyddiad electronig*”) means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

“the existing railway” (“*y rheilffordd bresennol*”) means the railway authorised by the Llangollen and Corwen Light Railway Order 1984 together with all lands and works relating to that railway;

“the extension railway” (“*y rheilffordd estyniadol*”) means the railway authorised to be constructed by this Order together with all lands and works relating to that railway and pending the completion of any part of the extension railway the expression shall include the site of that part;

“the former railway” (“*yr hen reilffordd*”) means the railway or former railway authorised by the Llangollen and Corwen Railway Act 1860<sup>(6)</sup> and so much of any other railway or former railway as is situated within the Order limits together with so much of all works relating to such railway or former railway as is so situated;

“the further limits” (“*y terfynau pellach*”) means the limits delineated by the lines shown on the works plans and marked “limits of land to be used” (“*terfynau'r tir sydd i'w ddefnyddio*”);

“highway” (“*priffordd*”) and “highway authority” (“*awdurdod priffyrdd*”) have the same meaning as in the Highways Act 1980<sup>(7)</sup>;

“the limits of deviation” (“*terfynau'r gwyriad*”) means the limits of deviation for the scheduled work shown on the works plans;

“maintain” (“*cynnal a chadw*”) includes inspect, repair, adjust, alter, remove, reconstruct and replace, and “maintenance” (“*gwaith cynnal a chadw*”) shall be construed accordingly;

“the Order limits” (“*terfynau'r gwyriad*”) means any limits of deviation and the further limits;

“owner” (“*perchennog*”), in relation to land, has the same meaning as in the Acquisition of Land Act 1981<sup>(8)</sup>;

“the PLC” (“*y CCC*”) means Llangollen Railway plc, a company registered under the Companies Act 1985 whose registered number is 2716476 having its registered office at the Railway Station, Abbey Road, Llangollen, Denbighshire LL20 8SN;

“the railways” (“*y rheilffyrdd*”) means the existing railway and the extension railway, or either of them;

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(4) 1961 c. 33.

(5) 1990 c. 8.

(6) 1860 c. clxxviii.

(7) 1980 c. 66.

(8) 1981 c. 67.

“the scheduled work” (“*y gwaith rhestredig*”) means the work specified in Schedule 1 (Scheduled work) or any part of it;

“the sections” (“*y trawsluniau*”) means the sections certified by the Welsh Ministers as the sections for the purposes of this Order;

“street” (“*stryd*”) includes part of a street;

“street authority” (“*awdurdod strydoedd*”) has the same meaning as in Part 3 of the New Roads and Street Works Act 1991<sup>(9)</sup>

“the Trust” (“*yr Ymddiriedolaeth*”) means the Llangollen Railway Trust, a registered charity and company limited by guarantee registered under the Companies Act 1985 whose registered number is 3040336 (originally incorporated as the Llangollen Railway Society Limited under the Industrial and Provident Societies Act 1965<sup>(10)</sup>) having its registered office at the Railway Station, Abbey Road, Llangollen, Denbighshire; LL20 8SN;

“the undertaker” (“*yr ymgwymerwr*”) means the Trust and following any sale, lease or underlease under article 17 (transfer of railways by undertaker) this expression shall mean or include the transferee within the meaning of that article;

“watercourse” (“*cwrs dŵr*”) includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“the works plans” (“*planiau'r gweithfeydd*”) means the plans certified by the Welsh Ministers as the works plans for the purposes of this Order.

(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 above its surface.

(3) All distances, directions and lengths stated in the description of the scheduled work or in any description of powers or lands are approximate and distances between points on a scheduled work shall be taken to be measured along the scheduled work.

### **Incorporation of Railways Clauses Consolidation Act 1845**

**3.—**(1) The following provisions of the Railways Clauses Consolidation Act 1845<sup>(11)</sup> shall be incorporated in this Order—

section 68 (accommodation works by company);

section 73 (accommodation works not to be required after prescribed period);

section 75 (omission to fasten gates);

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” (“*y cwmni*”) means the undertaker;

“goods” (“*nwyddau*”) includes any thing conveyed on the railway authorised to be constructed by this Order;

“prescribed” (“*rhagnodedig*”) in relation to any such provision means prescribed by this Order for the purposes of that provision;

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<sup>(9)</sup> 1991 c. 22.

<sup>(10)</sup> 1965 c. 12.

<sup>(11)</sup> 1845 c. 20.

“the railway” (“*y rheilffordd*”) means the extension railway and any other authorised works;  
 “the special Act” (“*y Ddeddf neilltuol*”) means this Order; and  
 “toll” (“*toll*”) includes any rate or charge or other payment payable under this Order or any other enactment for any passenger or goods conveyed on any railway authorised to be constructed by this Order.

## PART 2

### WORKS PROVISIONS

#### *Principal powers*

##### **Power to construct and maintain works**

- 4.—(1) The undertaker may construct and maintain the scheduled work.
- (2) Subject to article 6 (power to deviate), the scheduled work may only be constructed in the lines or situations shown on the works plans and in accordance with the levels shown on the sections.

##### **Power to construct and maintain ancillary works**

5.—(1) Subject to paragraph (4), the undertaker may carry out and maintain such of the following works as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled work, 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, a watercourse;
- (c) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the scheduled work;
- (d) works for the benefit or protection of premises affected by the scheduled work.

(2) Subject to paragraph (4), the undertaker may carry out such other works (of whatever nature) as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled work.

(3) Subject to paragraph (4), the undertaker may in particular within the land specified in column (1) of Schedule 2 (additional works) carry out and maintain any works specified in column (2) of that Schedule with all necessary works and conveniences in connection with those works.

(4) Paragraphs (1) to (3) shall only authorise the carrying out or maintenance of works outside the limits of deviation if such works are carried out within the further limits.

##### **Power to deviate**

6. In constructing or maintaining the scheduled work, the undertaker may—
- (a) deviate laterally from the lines or situations shown on the works plans to the extent of the limits of deviation for that work; and
  - (b) deviate vertically from the levels shown on the sections—
    - (i) to any extent not exceeding 3 metres upwards; or
    - (ii) to any extent downwards as may be found to be necessary or convenient.

## *Streets*

### **Access to works**

- 7.—(1) The undertaker may, for the purposes of the authorised works—
- (a) form and lay out means of access, or improve existing means of access, in the location specified in column (1) of Schedule 3 (access to works) to the highway specified in column (2) of that Schedule; and
  - (b) with the approval of the highway authority, such approval not to be unreasonably withheld, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised works.
- (2) If a highway authority which receives an application for consent under paragraph (1) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it shall be deemed to have granted it.

### **Level crossing, etc.**

- 8.—(1) The undertaker may construct the extension railway so as to carry it on the level across footpath FP 61 (“the footpath”) 435 metres south-west of Carrog Station.
- (2) The undertaker may in the exercise of the powers conferred by this article alter the level of the footpath.
- (3) During and for the purpose of the construction of the authorised works the undertaker following consultation with the street authority for the footpath may for any reasonable time prevent all persons from passing along so much of the footpath as is situated within the limits of deviation.
- (4) The highway authority and the undertaker may enter into agreements with respect to the construction and maintenance of the level crossing authorised by this article; and such an agreement may contain such terms as to payment or otherwise as the parties consider appropriate.
- (5) Any person who suffers loss by the suspension 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 1961 Act.

## *Supplemental powers*

### **Discharge of water**

- 9.—(1) The undertaker may use any watercourse 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 within the Order limits, make openings into, and connections with, the watercourse, or drain.
- (2) The undertaker shall not discharge any water into any watercourse, or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but shall not be unreasonably withheld.
- (3) The undertaker shall not make any opening into any drain except—
- (a) in accordance with plans approved by the person to whom the drain belongs, but such approval shall not be unreasonably withheld; and
  - (b) where that person has been given the opportunity to supervise the making of the opening.
- (4) The undertaker shall not, in the exercise of the powers conferred by this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(5) The undertaker shall take such steps as are reasonably practicable to secure that any water discharged into a watercourse or drain under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(6) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991<sup>(12)</sup>.

(7) If a person who receives an application for consent under paragraph (2) or approval under paragraph (3)(a) fails to notify the undertaker of that person's decision before the end of the period of 28 days beginning with the date on which the application was made, that person shall be deemed to have granted consent or given approval, as the case may be.

(8) In this article—

- (a) “drain” (“*traen*”) means a drain which belongs to the Environment Agency, an internal drainage board, a local authority or the Welsh Ministers; and
- (b) other expressions, excluding watercourses, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

## PART 3

### MISCELLANEOUS AND GENERAL

#### Defence to proceedings in respect of statutory nuisance

10.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990<sup>(13)</sup> (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order shall be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows—

- (a) that the nuisance relates to premises used by the undertaker for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to authorised works and that the nuisance is attributable to the carrying out of authorised works which are being carried out in accordance with a notice served under section 60 of the Control of Pollution Act 1974<sup>(14)</sup> or a consent given under section 61 or 65 of that Act; or
  - (b) that the nuisance is a consequence of the operation of the authorised works and that it cannot reasonably be avoided.
- (2) The following provisions of the Control of Pollution Act 1974, namely—
- (a) section 61(9) (consent for work on construction site to include a statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990), and
  - (b) section 65(8) (corresponding provision in relation to consent for registered noise level to be exceeded),

shall not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works.

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<sup>(12)</sup> 1991 c. 57.

<sup>(13)</sup> 1990 c. 43.

<sup>(14)</sup> 1974 c. 40.

(3) The provisions of this article are without prejudice to the application to the authorised works of section 122 of the Railways Act 1993<sup>(15)</sup> (statutory authority as a defence to actions in nuisance, etc.) or any rule of common law having similar effect.

### **Planning permission and supplementary matters**

**11.**—(1) In relation to the application of paragraph 3(c) of the Second Schedule of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Tree Preservation Order) Regulations 1969<sup>(16)</sup> (including that paragraph as applied by regulation 3(ii) of the Town and Country Planning (Tree Preservation Order) (Amendment) and (Trees in Conservation Areas) (Exempted Cases) Regulations 1975<sup>(17)</sup>, or as incorporated in any tree preservation order), any direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to works authorised by this Order shall be treated as deeming the permission to have been granted on application made under Part 3 of that Act for the purposes of that Part.

(2) In relation to the application of article 5(1)(d) of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Trees) Regulations 1999<sup>(18)</sup> as incorporated in any tree preservation order or as having effect by virtue of regulation 10(1)(a) of those Regulations, any direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to works authorised by this Order shall not be treated as an outline planning permission.

(3) Planning permission which is deemed by a direction under section 90(2A) of the 1990 Act to be granted in relation to works authorised by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of that Act (cases in which land is to be treated as operational land for the purposes of that Act).

### **Power to lop trees overhanging the authorised works**

**12.**—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised works, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised works or any apparatus used on the authorised works; or
- (b) from constituting a danger to passengers or other persons using the authorised works.

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

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.

### **Power to operate and use railway**

**13.**—(1) The undertaker may operate and use the extension railway and other authorised works as a system, or part of a system, of transport for the carriage of passengers and goods.

(2) Nothing in this Order, or in any enactment incorporated with or applied by this Order, shall prejudice or affect the operation of Part 1 of the Railways Act 1993<sup>(19)</sup>.

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<sup>(15)</sup> 1993 c. 43.

<sup>(16)</sup> S.I. 1969/17.

<sup>(17)</sup> S.I. 1975/148.

<sup>(18)</sup> S.I. 1999/1892.

<sup>(19)</sup> 1993 c. 43 As amended by the Transport Act 2000 (c. 38) and the Railways Act 2005 (c. 14).

### **Power to charge fares**

14. The undertaker may demand, take and recover or waive such charges for carrying passengers or goods on the extension railway or for any other services or facilities provided in connection with the operation of that railway, as it thinks fit.

### **Application of enactments**

- 15.—(1) In this article “the relevant date” (“y dyddiad perthnasol”) means—
- (a) in relation to so much of the former railway as is owned by or leased to the undertaker at the date of the coming into force of this Order, that date; and
  - (b) in relation to any part of the former railway which at that date is not so owned or leased, the date upon which that part is sold or leased to the undertaker.
- (2) Except as may be otherwise provided in this Order, as from the relevant date—
- (a) the former railway or any part of it shall continue to be subject to all statutory and other provisions applicable to the former railway at that date (in so far as they are still subsisting and capable of taking effect); and
  - (b) the undertaker shall, to the exclusion of BRB (Residuary) Limited—
    - (i) be entitled to the benefit of, and to exercise, all rights, powers and privileges relating to the former railway; and
    - (ii) subject to paragraph (3), be subject to all obligations, statutory or otherwise, relating to the former railway (in so far as they are still subsisting and capable of taking effect), to the intent that BRB (Residuary) Limited will be released from all such obligations.
- (3) Any enactment by which the construction and operation of the former railway was authorised has effect subject to the provisions of this Order.
- (4) In this article “BRB (Residuary) Limited” means the company of that name whose registered number is 4146505 having its registered office at 14 Pentonville Road, London, N1 9HF.

### **Application of byelaws to extension railway**

16.—(1) The byelaws made by the Llangollen Railway Society Limited in relation to the existing railway and confirmed by the Secretary of State on 4th July 1986 shall apply to the extension railway as they apply to the existing railway.

(2) Paragraph (1) shall have effect in relation to the extension railway or any part of it on and from the date on which that railway or part is completed and open to traffic.

### **Transfer of railways by undertaker**

- 17.—(1) In this article—
- “lease” (“*prydles*”) includes an underlease and “lease” (“*prydlesu*”) where used as a verb shall be construed accordingly;
- “the transferee” (“*y trosglwyddai*”) means any person to whom the railways, or any part of them, are or is leased or sold in accordance with this article; and
- “the transferred undertaking” (“*yr ymgymeraeth a drosglwyddir*”) means so much of the railways as is leased or sold in accordance with this article.
- (2) Subject to paragraph (3) the undertaker may—
- (a) lease the railways, or any part of them, to any person; or



- (b) sell the railways, or any part of them, to any person;  
on such terms and conditions as may be agreed between the undertaker and the transferee.
- (3) The undertaker shall not lease or sell the railways, or any part of them, under this article to any person except with the consent of the Welsh Ministers.
- (4) Except as may be otherwise provided in this Order,
- (a) 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 those provisions are still subsisting and capable of taking effect); and
  - (b) the transferee shall, to the exclusion of the undertaker, (i) be entitled to the benefit of, and to exercise, all rights, powers and privileges, and (ii) be subject to all obligations, statutory or otherwise relating to the transferred undertaking (in so far as those provisions are still subsisting and capable of taking effect) to the intent that the undertaker shall be released from all such obligations.
- (5) Paragraph (4) shall have effect during the term of any lease granted under sub paragraph (2) (a) and from the operative date of any sale under sub-paragraph (2)(b).

#### **Application of landlord and tenant law**

**18.**—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the railways or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised works, or any part of them,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants shall prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law shall apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

#### **Obstruction of construction of authorised works**

**19.** Any person who, without reasonable excuse—

- (a) obstructs any person acting under the authority of the undertaker in setting out the lines of the scheduled work or in constructing any authorised work; or
- (b) interferes with, moves or removes any apparatus belonging to any person acting under the authority of the undertaker,

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

## **Trespass**

**20.**—(1) Any person who—

- (a) trespasses on any part of the railways; or
- (b) trespasses on any land of the undertaker in dangerous proximity to the railways or to any apparatus used for or in connection with the operation of the railways,

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 on the railways was clearly exhibited and maintained at the station on the railways nearest the place where the offence is alleged to have been committed.

## **For protection of the Environment Agency**

**21.** Schedule 4 shall have effect.

## **For protection of Dŵr Cymru Cyfyngedig**

**22.** Schedule 5 shall have effect.

## **Certification of plans, etc.**

**23.** The undertaker shall, as soon as practicable after the making of this Order, submit copies of the sections and the works plans to the Welsh Ministers for certification that they are, respectively, true copies of the sections and works 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**

**24.**—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post; or
- (b) with the consent of the recipient and subject to paragraphs (6) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978<sup>(20)</sup> as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

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(20) 1978 c. 30.

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
  - (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.
- (5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement shall be taken to be fulfilled where the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission either in writing or by electronic transmission.
- (6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender shall provide such a copy as soon as reasonably practicable.
- (7) Any consent to the use of electronic transmission given by a person may be revoked by that person in accordance with paragraph (8).
- (8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—
- (a) that person shall give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
  - (b) such revocation shall be final and shall take effect on a date specified by the person in the notice but that date shall not be less than 7 days after the date on which the notice is given.
- (9) This article shall not be taken to exclude the employment of any method of service not expressly provided for by it.

#### **No double recovery**

**25.** 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**

**26.** Any difference under any provision of this Order, unless otherwise provided for, 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 giving notice in writing to the other) by the President of the Institution of Civil Engineers.

25 August 2010

*Jane Davidson*  
Minister for Environment, Sustainability and  
Housing, one of the Welsh Ministers.

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

## SCHEDULES

### SCHEDULE 1

Article 4(1)

#### SCHEDULED WORK

In the county of Denbighshire, community of Corwen—

A railway (3810 metres in length) commencing at a point 155 metres north-east of the junction of Green Lane with London Road extending along the course of the former railway and terminating at a point 160 metres west of the western end of Carrog Station by a junction within the existing railway.

### SCHEDULE 2

Article 5(3)

#### ADDITIONAL WORKS

<i>(1)</i> <i>Lands</i>	<i>(2)</i> <i>Additional works</i>
Within the area shown hatched on sheet 1 of the works plans	Removal of embankment of former railway.
Between points A1, A2, A3 and A4 on sheet 1 of the works plans	Provision of temporary access road.
Between points B1, B2, B3 and B4 on sheet 1 of the works plans	Provision of permanent access road.
Between points C1 and C2 on sheet 1 of the works plans	Closure and removal of existing access road.
Between points D1, D2, D3 and D4 on sheet 1 of the works plans	Provision of a new station building together with ancillary facilities.

### SCHEDULE 3

Article 7

#### ACCESS TO WORKS

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Highway</i>
In the community of Corwen, at points B1 and B2 on Sheet 1 of the works plan.	Green Lane

## SCHEDULE 4

Article 21

### FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

1.—(1) The following provisions shall apply for the protection of the Environment Agency unless otherwise agreed in writing between the undertaker and the Environment Agency.

(2) In this Schedule—

“construction” (“*adeiladu*”) shall include execution, placing, altering, replacing, relaying and removal and “construct” (“*adeileidir*”) and “constructed” (“*adeiladwyd*”) shall be construed accordingly;

“damage” (“*difrod*”) shall include scouring, erosion and environmental damage and “damaged” (“*wedi'i ddifrodi*”, “*ac a ddifrodwyd*”) shall be construed accordingly;

“drainage work” (“*gwaith traenio*”) shall mean any watercourse and includes any land which is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence;

“the fishery” (“*y bysgodfa*”) shall mean any waters containing fish and fish in, or migrating to or from, such waters and the spawn, habitat or food of such fish;

“plans” (“*planiau*”) shall include sections, drawings, specifications and method statements;

“specified work” (“*gwaith penodedig*”) shall mean so much of any work or operation authorised by this Order as is in, on, under, over or within 16 metres of a watercourse or is otherwise likely to—

- (a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
- (b) affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;
- (c) cause obstruction to the free passage of fish or damage to any fishery; or
- (d) affect the conservation, distribution or use of water resources; and

“watercourse” (“*cwrs dŵr*”) shall include all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows (whether or not the flow is intermittent) except a public sewer.

2.—(1) Before beginning to construct any specified work, the undertaker shall submit to the Environment Agency plans of the specified work and such further particulars available to it as the Environment Agency may within 28 days of the submission of the plans reasonably require.

(2) Any such specified work shall not be constructed except in accordance with such plans as may be approved in writing by the Environment Agency, or determined under paragraph 13.

(3) Any approval of the Environment Agency required under this paragraph

- (a) shall not be unreasonably withheld;
- (b) shall be deemed to have been given if it is neither given nor refused in writing within 2 months of the submission of the plans for approval and in the case of a refusal, accompanied by a statement of the grounds of refusal; and
- (c) may be given subject to such reasonable requirements as the Environment Agency may make for the protection of any drainage work or fishery or for the protection of water resources, or for the prevention of flooding or pollution or in the discharge of its environmental and recreational duties.

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(4) The Environment Agency shall use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

3. In particular the requirements which the Environment Agency may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased by reason of any specified work.

4.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Environment Agency under paragraph 3, shall be constructed—

- (i) with all reasonable despatch in accordance with the plans approved or deemed to have been approved or settled under this Schedule; and
- (ii) to the reasonable satisfaction of the Environment Agency,

and the Environment Agency shall be entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker shall give to the Environment Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is brought into use.

(3) If any part of the authorised works comprising a structure in, over or under a drainage work is constructed otherwise than in accordance with the requirements of this Schedule, the Environment Agency may by notice in writing require the undertaker, at the undertaker's own expense, to comply with the requirements of this Schedule or (if the undertaker so elects and the Environment Agency in writing consents, such consent not to be unreasonably withheld) to remove, alter or pull down the authorised work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Environment Agency reasonably requires.

(4) Subject to sub-paragraph (5) and paragraph 8, if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served upon the undertaker, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the Environment Agency may execute the works specified in the notice and any expenditure incurred by it in so doing shall be recoverable from the undertaker.

(5) In the event of any dispute as to whether sub-paragraph (3) is properly applicable to any work in respect of which a notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Environment Agency shall not except in emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

5.—(1) Subject to the provisions of this Schedule and except to the extent that the Environment Agency or another person is liable to maintain any such work and is not precluded by the exercise of the powers conferred by this Order from doing so, the undertaker shall from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation or on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the Environment Agency, the Environment Agency may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if

the undertaker so elects and the Environment Agency in writing consents, such consent not to be unreasonably withheld), to remove the work and restore the site to its former condition, to such extent and within such limits as the Environment Agency reasonably requires.

(3) Subject to paragraph 8, if, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Environment Agency may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the undertaker.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Environment Agency shall not, except in a case of an emergency, exercise the powers conferred by sub-paragraph (3) above until the dispute has been finally determined.

6. Subject to paragraph 8, if by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage shall be made good by the undertaker to the reasonable satisfaction of the Environment Agency and if the undertaker fails to do so, the Environment Agency may make good the same and recover from the undertaker the expense reasonably incurred by it in so doing.

7.—(1) The undertaker shall take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in any fishery during the construction of any specified work.

(2) If by reason of—

- (i) the construction of any specified work; or
- (ii) the failure of any such work,

damage to the fishery is caused, or the Environment Agency has reason to expect that such damage may be caused, the Environment Agency may serve notice on the undertaker requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) Subject to paragraph 8, if, within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Environment Agency of any damage or expected damage to the fishery, the undertaker fails to take such steps as are described in sub-paragraph (2), the Environment Agency may take those steps and may recover from the undertaker the expense reasonably incurred by it in doing so.

(4) Subject to paragraph 8, in any case where immediate action by the Environment Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Environment Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker the reasonable cost of so doing provided that a notice specifying those steps is served on the undertaker as soon as is reasonably practicable after the Environment Agency has taken, or commenced to take, the steps specified in the notice.

8. Nothing in paragraphs 4(4), 5(3), 6, 7(3) and (4) shall authorise the Environment Agency to execute works on or affecting any operational railway without the consent of the undertaker, such consent not to be unreasonably withheld.

9. The undertaker shall indemnify the Environment Agency in respect of all costs, charges and expenses which the Environment Agency may reasonably incur or have to pay or which it may sustain—

- (a) in the examination or approval of plans under this Schedule; and

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- (b) in the inspection of the construction of the specified works or any protective works required by the Environment Agency under this Schedule.

**10.**—(1) Without affecting the other provisions of this Schedule, the undertaker shall indemnify the Environment Agency from all claims, demands, proceedings, costs, damages, expenses or loss which may be made or taken against, recovered from or incurred by the Environment Agency by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any damage to the fishery;
- (c) any raising or lowering of the water table in land adjoining the works authorised by this Order or any sewers, drains and watercourses;
- (d) any flooding or increased flooding of any such lands; or
- (e) inadequate water quality in any watercourse or other surface waters or in any groundwater,

which is caused by, or results from, the construction of any of the works or any act or omission of the undertaker, its contractors, agents or employees whilst engaged upon the work.

(2) The Environment Agency shall give to the undertaker reasonable notice of any such claim or demand and no settlement or compromise of it shall be made without the agreement of the undertaker which shall not be unreasonably withheld.

**11.** The fact that any work or thing has been executed or done in accordance with a plan approved or deemed to be approved by the Environment Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, shall not relieve the undertaker from any liability under the provisions of this Schedule.

**12.** For the purposes of Chapter 2 of Part 2 of the Water Resources Act 1991(21) (abstraction and impounding of water) and section 109 of that Act (as to structures in, over or under watercourses) as applying to the construction of any specified work, any consent or approval given or deemed to be given by the Environment Agency under this Schedule with respect to such construction shall be deemed also to constitute a licence under that Chapter to obstruct or impede the flow of inland waters at that point by means of impounding works or, as the case may be, a consent or approval under section 109, and the undertaker shall not be obliged to serve any notice which would otherwise be required by section 30 of the said Act of 1991 (which relates to the construction of boreholes and similar works in respect of which a licence is not required).

**13.** Any dispute arising between the undertaker and the Environment Agency under this Schedule (other than a difference as to its meaning or construction) shall, if the parties agree, be determined by arbitration under article 26 (arbitration), but shall otherwise be determined by the Welsh Ministers on a reference to them by the undertaker or the Environment Agency, after notice in writing by one to the other.

## SCHEDULE 5

Article 22

### FOR THE PROTECTION OF DŵR CYMRU CYFYNGEDIG

**1.** For the protection of Dŵr Cymru Cyfyngedig (“the Company) the following provisions shall, unless otherwise agreed in writing between the undertaker and the Company, have effect in relation to the carrying out of the authorised works or the exercise of any other powers conferred by this Order.

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(21) 1991 c. 57



**2.** In this Schedule—

“the 1991 Act” (“*Deddf 1991*”) means the New Roads and Street Works Act 1991;

“functions” (“*swyddogaethau*”) includes powers and duties;

“in” (“*mewn*”), in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus over, under or upon land;

“relevant pipe” (“*pibell berthnasol*”) means:

- (a) any mains, pipes or other apparatus belonging to or maintained by the Company for the purposes of water supply; and
- (b) any drain or works vested in the Company under the Water Industry Act 1991(22); and
- (c) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an Agreement to adopt made under section 104 of that Act, including a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which a relevant pipe is or is to be located or which gives or will give access to the relevant pipe;

“work” (“*gwaith*”) means any of the authorised works.

**3.** This Schedule does not apply to apparatus in respect of which the relations between the undertaker and the Company are regulated by the provisions of Part 3 of the 1991 Act.

**4.** Nothing in this Order 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 the Company, such consent not to be unreasonably withheld.

**5.** 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 the Company such proper and sufficient plans of the work as may reasonably be required by the Company and shall not commence the work until such plans thereof have been approved in writing by the Company (which approval shall not be unreasonably withheld) or settled by arbitration under article 26.

**6.** If within 56 days of plans being furnished to the Company under paragraph 5 the Company does not indicate in writing its disapproval and the grounds of its disapproval it shall be deemed to have approved the plans as furnished.

**7.** The Company may as a condition of its 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 schedule.

**8.** The approval of the Company of any plans under this article shall not (in the absence of negligence on the part of the Company) exonerate the undertaker from any liability or affect any claim for compensation under this schedule.

**9.** Where a relevant pipe is situated in or under any land owned or held for the purposes of the railways and is not removed or diverted the undertaker shall at its own expense maintain all culverts over such relevant pipes which are in existence at the coming into force of this Order so as to leave that relevant pipe accessible for the purposes of repairs.

**10.** Nothing in paragraph 9 shall have the effect of requiring the undertaker to carry out works of maintenance in respect of any culvert which the Company or any other person is liable to maintain.

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(22) 1991 c. 56

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**11.** The undertaker shall afford reasonable facilities to the Company for the execution and doing of all such works and things as may be reasonably necessary to enable it to inspect, repair, maintain, renew, replace, remove, alter or use a relevant pipe and in particular to carry out any protective works or any diversion required by reason of the exercise of the powers of this Order.

**12.—(1)** Where, in accordance with the provisions of this Schedule, the undertaker affords for the purposes of the authorised works to the Company facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights subject to paragraph 12 (2) shall be granted upon the same terms and conditions as those pertaining to the substituted apparatus and if there is any dispute as to those terms and conditions, the dispute shall be referred to arbitration in accordance with article 26.

(2) In settling terms and conditions for the purposes of paragraph 12(1) in respect of the alternative apparatus to be constructed in or along any railway of the undertaker, the arbitrator shall—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the railways and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker or the traffic on the railways; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions if any applicable to the apparatus constructed in or along the railways for which the alternative apparatus is to be substituted.

**13.—(1)** Subject to the following provisions of this paragraph, the undertaker shall repay to the Company the reasonable expenses incurred by the Company in, or in connection with, the inspection, removal, alteration or protection of any relevant pipe or the construction of any new relevant pipe which may be required in consequence of the execution of any of the authorised works.

(2) If in accordance with the provisions of this Schedule apparatus of greater capacity or of greater dimensions is placed in substitution for existing apparatus of smaller capacity or of smaller dimensions and the placing of apparatus of that capacity or those dimensions, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 26 to be necessary, then, if such placing involves cost in the construction of works under this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing capacity or dimensions as the case may be, the amount which apart from this paragraph would be payable to the Company by virtue of sub-paragraph (1), shall be reduced by the amount of that excess.

(3) For the purposes of sub-paragraph (2) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as placing of apparatus of greater dimensions than those of the existing apparatus.

(4) An amount which apart from this sub-paragraph would be payable to the Company in respect of works by virtue of sub-paragraph (1) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 8 years earlier so as to confer on the Company any financial benefit by deferment of the time for renewal of the apparatus in the normal course, be reduced by the amount which represents that benefit.

**14.—(1)** Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the authorised 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 Company, or there is any interruption in any service provided, or in the supply of any goods, by the Company, the undertaker shall-

- (a) bear and pay the cost reasonably incurred by the Company in making good such damage or restoring the supply; and

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(b) make reasonable compensation to the Company for any other expenses, loss, damages, penalty or costs incurred by the Company, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) shall impose any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of the Company, its officers, servants, contractors or agents.

(3) The Company shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without the consent of the undertaker, which, if it withholds such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

**15.** Nothing in this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and the Company in respect of any apparatus laid or erected in the former railway before the date on which this Order is made.

**16.** Any difference arising between the undertaker and the Company under this article (other than a difference as to its meaning or construction) shall be determined by arbitration under article 26.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

The Order authorises the Llangollen Railway Trust to construct and operate a new railway (“the extension railway”) from Corwen to Carrog in the county of Denbighshire together with related works and facilities. The extension railway will largely be constructed on the trackbed of part of the former Ruabon to Morfa Mawddach railway and will include a junction at Carrog with the existing railway of the Trust. In addition the Order makes other provisions in relation to the extension railway and the existing railway.

The Order does not contain compulsory purchase powers and interests in or rights over the land required for the works will be acquired by agreement.

A copy of the works plan may be inspected at the offices of the Llangollen Railway Trust, the Railway Station, Abbey Road, Llangollen LL20 8SN.