STATUTORY INSTRUMENTS

1975 No. 962

TRANSPORT

The Conwy Mussel Fishery (Jetty Hoist) Light Railway Order 1975

Made - - - -	*5th June* 1975
Coming into Operation	*15th June* 1975

The Secretary of State for the Environment on the application of the Aberconwy Borough Council and in exercise of powers conferred by sections 7, 9 and 10 of the Light Railways Act 1896(**a**) as amended by the Light Railways Act 1912(**b**) and Part V of the Railways Act 1921(**c**) and now vested in him (**d**) and of all other powers enabling him in that behalf hereby makes the following Order:—

Citation and commencement

1. This Order may be cited as the Conwy Mussel Fishery (Jetty Hoist) Light Railway Order 1975 and shall come into operation on 15th June 1975.

Interpretation

2.—(1) In this Order unless the context otherwise requires the following expressions have the meanings hereby respectively assigned to them, that is to say:—

"the Authority" means the Welsh National Water Development Authority;

"the Council" means the Aberconwy Borough Council;

"the deposited plan" and "the deposited sections" mean respectively the plan and sections deposited in respect of the application for this Order with the Department of the Environment and signed by a Senior Principal in the Department;

"land" includes land covered by water and any interest in land and any easement or right in, to or over land;

"the limits of deviation" means the limits of deviation shown on the deposited plan;

"the railway" means the railway and works authorised by this Order;

(a) 1896 c. 48.
(b) 1912 c. 19.
(c) 1921 c. 55.
(d) S.I. 1970/1681 (1970 III, p. 5551).

"the road" means the public highway in the borough of Aberconwy known as Benarth Road;

"tidal work" means so much of any work authorised by this Order as is on, under or over tidal waters or tidal lands below the level of mean high water springs.

(2) Unless the context otherwise requires references in this Order to any enactment shall be construed as references to that enactment as amended by any subsequent enactment including this Order.

(3) The Interpretation Act 1889**(a)** shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

Incorporation of general Act

3.—(1) Subject to the provisions of this article the provisions of the Railway Clauses Consolidation Act 1845**(b)** except sections 8, 9, 11 to 15, 17, 32 to 46, 48 to 57, 59 to 65, 68 to 74, 87 to 97 and 115 to 124 are incorporated with and form part of this Order so far as the same are applicable for the purposes of this Order and are not inconsistent with or varied by the provisions of this Order and this Order shall be deemed to be the special Act for the purposes of the said incorporated provisions.

(2) The provisions of sections 18 to 23 of the said Act of 1845 as incorporated with this Order shall for the purposes of this Order extend and apply to the water mains, pipes and apparatus of the Authority and shall be construed as if the Authority were mentioned in those sections in addition to "company or society" but those provisions shall not extend to regulate the relations between the Council and the Authority in respect of any matter or thing concerning which those relations are specifically regulated by the provisions of Article 8 of this Order.

(3) The provisions of section 47 (which relates to the crossing of roads on the level) of the said Act of 1845 as so incorporated shall have effect as if:—

(*a*) for the words "and such gates shall be kept constantly closed across such roads on both sides of the railway, except during the time when horses, cattle, carts or carriages passing along the same shall have to cross such railway" there were substituted the words "and such gates shall be kept constantly closed across the railway except when vehicles passing along the railway shall have occasion to cross such road or when cables, chains or ropes attached to such vehicles are across such road",

(*b*) for the words "and the person entrusted with the care of such gates shall cause the same to be closed as soon as such horses, cattle, carts or carriages shall have passed through the same" there were substituted the words "and the person entrusted with the care of such gates shall cause the same to be closed across the railway as soon as such rail vehicles and all cables, chains or ropes attached thereto shall have cleared the road", and

(*c*) the proviso were omitted.

(a) 1889 c. 63. **(b)** 1845 c. 20.

Power to make railway

4. (1) Subject to the provisions of this Order the Council may when they have acquired the necessary lands or sufficient rights or interests therein make and maintain in the lines and according to the levels and within the limits of deviation shown on the deposited plan and the deposited sections the railway hereinafter described with all necessary works and conveniences connected therewith.

(2) The said railway is situate wholly in the borough of Aberconwy in the county of Gwynedd and is—

A railway 44 metres or thereabouts in length commencing near the north side of the northernmost tank of the mussel purification station on the south side of the road passing across the road on to the foreshore of the river Conwy supported thereon by a ramp and jetty and terminating on that foreshore at a point 34 metres or thereabouts north-north-east of the river wall to the road.

Power to deviate

5. In the construction of the railway or any part thereof the Council may deviate from the line or situation thereof shown on the deposited plan to the extent of the limits of deviation and may deviate vertically from the levels shown on the deposited sections to any extent downwards and to any extent not exceeding one metre upwards or to such further extent as may be found necessary or convenient and as may be sanctioned by the Secretary of State for the Environment.

As to crossing of road on level

6.—(1) The Council may in the construction of the railway carry the same across and on the level of the road.

(2) The gates which the Council are required by section 47 of the Railways Clauses Consolidation Act 1845 to erect and maintain at the level crossing shall conform to the requirements specified in the Schedule hereto and the Council shall also provide and maintain in connection therewith the devices, reflectors and traffic signs mentioned in that Schedule.

Power to stop up road temporarily

7. (1) Subject to the provisions of this Order, the Council may for the purpose of or in connection with the construction of the railway stop up, open, break up, interfere with, alter or divert temporarily all or any part of the carriageway or footway of the part of the road within the limits of deviation and may execute and do all necessary works and things for or in connection with such stopping up, opening, breaking up interference, alteration or diversion, and for keeping such carriageway or footway open for traffic, and may remove or alter any lamp-posts, posts and other erections upon the land so affected.

(2) The Council shall provide reasonable access for all persons bona fide going to or returning from any premises in the road during any stopping up, interference, alteration or diversion under the powers of this section.

(3) (*a*) The exercise of the powers conferred by this article shall not affect the powers of the Post Office under the Telegraph Acts 1863 to 1916 to maintain, inspect, repair, renew or remove telegraphic lines or to open or break up the road for any of those purposes.

(*b*) In this paragraph the expression "telegraphic line" has the same meaning as in the Telegraph Act 1878(a).

For protection of the Authority

8. For the protection of the Authority the following provisions shall, except so far as it may be otherwise agreed in writing between the Council and the Authority, have effect, that is to say:—

(1) Notwithstanding anything in Article 7 of this Order, at least twenty-eight days before commencing any part of the railway under, over or within 6 metres of the ductile iron water main of the Authority laid in the road (in this Article referred to as "the main") the Council shall deliver to the Authority detailed plans, sections and particulars of the works so proposed to be executed describing the proposed manner of executing the same, together with a notice stating the date when it is proposed to commence such works.

(2) If it should appear to the Authority that such works will interfere with, endanger or render useless or partially useless or less accessible or provide insufficient cover over the main or impede the supply of water, the Authority may within fourteen days of the receipt of such notice from the Council give notice to the Council to lower or otherwise alter the position of the main or to support the main, or to substitute temporarily or otherwise other apparatus or to lay additional new apparatus to connect up the main or any part thereof rendered useless or partially useless by any works of the Council and to lay or place under or over the main cement, concrete or other like substance in such manner as may be considered necessary and any difference as to the necessity of such lowering, alteration, support, substitution, laying or placing cement, concrete or other like substance (in this Article referred to as "protective works") shall be settled by an arbitrator as hereinafter provided, and all such protective works shall (save as hereinafter provided) be executed by and at the expense of the Council but to the reasonable satisfaction and under the superintendence (if such superintendence is given) of the Authority, and the reasonable costs, charges and expenses of such superintendence shall be paid by the Council.

(3) If the Authority by notice in writing to the Council within fourteen days after the receipt by them of notice of the intended commencement by the Council of any part of the railway as aforesaid so require, the Authority may be their own engineers or workmen do and execute such protective works so far as they affect the main, and the Council shall on completion thereof pay to the Authority the reasonable expenses incurred by them in the execution of such protective works. The Council shall afford to the Authority all reasonable facilities for the purpose of enabling the Authority to carry out any protective works specified in such notice:

(a) 1878 c. 76.

Provided that, if for fourteen days after any such notice is given to the Council by the Authority the Authority neglect to proceed with all practicable diligence to carry out such works, the Council may forthwith proceed with the works as if such notice had not been given to them.

(4) In the event of such plans, sections and particulars so delivered to the Authority as aforesaid not being objected to within fourteen days from the receipt thereof, they shall be deemed to have been approved by the Authority. The works to which the said plans, sections and particulars respectively relate shall be executed substantially in accordance therewith as approved by the Authority or as determined by an arbitrator as hereinafter provided.

(5) The Council shall repay to the Authority the reasonable expenses incurred by the Authority in or in connection with the making good of any damage to the main by reason or in consequence of the execution of any work carried out by the Council under the powers of this Order and for which the Authority would have been liable if the work had been carried out otherwise than under statutory powers, make good any loss occasioned to the Authority by the interruption of the supply of water by the Authority and indemnify the Authority against any penalties, costs, actions, claims or demands arising out of any interference by the Council with the main caused by or resulting from any act or omission or default of the Council in carrying out the purposes of this Order or of any of their contractors, agents, workmen or servants or any person in the employ of them or either of them:

Provided that the Authority shall give to the Council reasonable notice of any action, claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the Council.

(6) Notwithstanding anything in this Order or the temporary stopping up, opening, breaking up, interference with, alteration or diversion of the road under the powers of Article 7 of this Order, the Authority shall be at liberty to execute and do all such works and things in, upon or under the road as may be reasonably necessary for inspecting, repairing, maintaining, renewing, replacing or removing the main, without incurring any liability to the Council in respect of any interruption in the use of the railway thereby occasioned or in respect of any special precautions adopted by the Council during the execution and doing of such works and things or in respect of any reinforcement or other works carried out by the Council in consequence of such works or things executed or done by the Authority.

(7) If any difference arises under this Article (other than a difference as to the construction or meaning of this Article) between the Council and the Authority, the same shall be referred to arbitration by a single arbitrator to be appointed by agreement between the parties, or, in default of agreement, to be appointed by the President of the Institution of Civil Engineers on the application of either party after giving notice in writing to the other party.

Gauge of railway and motive power

9. The railway shall be constructed on a gauge of 60 centimetres or thereabouts and the motive power of the railway shall be electric driven winch or such other motive power as the Secretary of State for the Environment may approve.

User of railway

10. No part of the railway shall be used for the public conveyance of passengers.

Power to acquire lands

11. The Council may acquire by agreement such of the lands delineated upon the deposited plan as they may require for the purposes of the railway or any work connected therewith.

Tidal works not to be executed without approval of Secretary of State for Trade

12.—(1) A tidal work shall not be constructed except in accordance with plans and sections approved by the Secretary of State for Trade and subject to any conditions and restrictions imposed by that Secretary of State before the work is begun.

(2) If a tidal work is constructed in contravention of this Article or of any condition or restriction imposed under this Article:—

(*a*) the Secretary of State for Trade may by notice in writing require the Council at their own expense to remove the tidal work or any part thereof and restore the site thereof to its former condition; and if, on the expiration of thirty days from the date when the notice is served upon the Council they have failed to comply with the requirements of the notice, the Secretary of State for Trade may execute the works specified in the notice; or

(*b*) if it appears to the Secretary of State for Trade urgently necessary so to do, he may himself remove the tidal work or part of it and restore the site to its former condition;

and any expenditure incurred by the Secretary of State for Trade in so doing shall be recoverable from the Council as a simple contract debt.

Provision against danger to navigation

13.—(1) In case of injury to or destruction or decay of a tidal work or any part thereof the Council shall forthwith notify Trinity House and shall lay down such buoys exhibit such lights and take such other steps for preventing danger to navigation as Trinity House shall from time to time direct.

(2) If the Council fail to notify Trinity House as required by this Article or to comply in any respect with a direction given under this Article they shall be liable on summary conviction to a fine not exceeding one hundred pounds and on conviction on indictment to a fine.

Abatement of works abandoned or decayed

14.—(1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State for Trade may by notice in writing require the Council at their own expense either to repair and restore the work or any part thereof or to remove the work and restore the site thereof to its former condition, to such an extent and within such limits as the Secretary of State for Trade thinks proper.

(2) Where a work authorised by this Order and consisting partly of a tidal work and partly of works on or over land above the level of mean high water springs is abandoned or suffered to fall into decay and that part of the work on or over land above the level of mean high water springs is in such condition as to interfere or to cause reasonable apprehension that it may interfere with the right of navigation or other public rights over the foreshore, the Secretary of State for Trade may include that part of the work, or any portion thereof, in any notice under this Article.

(3) If, on the expiration of thirty days from the date when a notice under this Article is served upon the Council they have failed to comply with the requirements of the notice the Secretary of State for Trade may execute the works specified in the notice and any expenditure incurred by him in so doing shall be recoverable from the Council as a simple contract debt.

Survey of tidal works

15. The Secretary of State for Trade may at any time if he deems it expedient order a survey and examination of a tidal work constructed by the Council or of the site upon which it is proposed to construct the work and any expenditure incurred by the Secretary of State for Trade in any such survey and examination shall be recoverable from the Council as a simple contract debt.

Permanent lights on tidal works

16.—(1) After the completion of a tidal work the Council shall at the outer extremity thereof exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as Trinity House shall from time to time direct.

(2) If the Council fail to comply in any respect with a direction given under this Article they shall be liable on summary conviction to a fine not exceeding one hundred pounds and on conviction on indictment to a fine.

Lights on tidal works during construction

17.—(1) The Council shall at or near a tidal work during the whole time of the construction thereof exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as the Secretary of State for Trade shall from time to time direct.

(2) If the Council fail to comply in any respect with a direction given under this Article they shall be liable on summary conviction to a fine not exceeding one hundred pounds and on conviction on indictment to a fine.

Costs of Order

18. All costs, charges and expenses of and incidental to the preparing for, obtaining and making of this Order or otherwise in relation thereto shall be paid by the Council.

Signed by authority of
the Secretary of State.

W. J. Sharp,
An Under Secretary in the
Department of the Environment.

5th June 1975.

SCHEDULE

Particulars of Gates, Traffic Signs and Devices

1. There shall be two pairs of level crossing gates of tubular construction extending across the full width of the road when the railway is in use (one pair on each side of the railway) and across the railway, on each side of the road when the railway is not in use (one pair on each side of the road) rendering it impossible for the road and the railway to be open for use at the same time.

2. Means shall be provided to fasten each pair of gates when extended across the road and to hold the gates in the fully opened position when extended across the railway.

3. There shall be one red reflector on each gate which shall be visible from the road when the railway is in use.

4. A traffic sign of the size colour and type shown in diagram 537 in Part I of Schedule 1 to the Traffic Signs Regulations and General Directions 1964 shall be provided on the nearside of the road on each side of the railway at a distance of 50 metres from the crossing and shall face towards traffic approaching the level crossing.

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