



# Channel Tunnel Rail Link Act 1996

## 1996 CHAPTER 61

### PART I

#### THE CHANNEL TUNNEL RAIL LINK

##### *Works*

### **1 Construction and maintenance of scheduled works**

- (1) The nominated undertaker may construct and maintain the works specified in Schedule 1 to this Act (“the scheduled works”), being—
  - (a) works for the construction of a railway between St. Pancras in London and the Channel Tunnel portal at Castle Hill, Folkestone, Kent,
  - (b) works consequent on, or incidental to, the construction of the works mentioned in paragraph (a) above, and
  - (c) works which can conveniently be carried out at the same time as works included in paragraph (a) or (b) above.
- (2) Subject to subsection (3) 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) In constructing or maintaining any of the scheduled works, the nominated undertaker may—
  - (a) deviate laterally from the lines or situations shown on the deposited plans to any extent within the limits of deviation for that work so shown, and
  - (b) deviate vertically from the level shown for that work on the deposited sections—
    - (i) to any extent not exceeding 3 metres upwards, and
    - (ii) to any extent downwards.

## **2 Further and supplementary provisions**

Schedule 2 to this Act (which contains further and supplementary provisions about works) shall have effect.

## **3 Highways**

Schedule 3 to this Act (which makes provision in relation to highways in connection with the works authorised by this Part of this Act) shall have effect.

### *Land*

## **4 Acquisition within limits shown on deposited plans**

- (1) The Secretary of State is authorised by this section to acquire compulsorily—
  - (a) so much of the land shown on the deposited plans within the limits of deviation for the scheduled works as may be required for or in connection with the works authorised by this Part of this Act, and
  - (b) so much of the land so shown within the limits of land to be acquired or used as may be so required.
- (2) Without prejudice to the generality of subsection (1) above, the purposes for which land may be acquired under that subsection include, in the case of so much of any land specified in columns (1) and (2) of Part I of Schedule 4 to this Act as is within the limits of land to be acquired or used, the purpose specified in relation to that land in column (3) of that Part as one for which that land may be acquired or used.
- (3) Part II of Schedule 4 to this Act (application of legislation relating to compulsory purchase) and Part III of that Schedule (supplementary provisions) shall have effect.

## **5 Acquisition outside limits shown on deposited plans**

- (1) The Secretary of State may acquire compulsorily land outside the relevant limits which is required for or in connection with the works authorised by this Part of this Act.
- (2) Without prejudice to the generality of subsection (1) above, the land which may be compulsorily acquired under that subsection shall include land which is or will be required—
  - (a) for use in mitigating the effect on the environment of any of the works authorised by this Part of this Act,
  - (b) for use in relocating apparatus which it is expedient to divert or replace in consequence of the carrying out of any of the works authorised by this Part of this Act, or
  - (c) for the purpose of being given in exchange for land forming part of a common, open space or fuel or field garden allotment which is acquired under section 4(1) above.
- (3) The power of acquiring land compulsorily under subsection (1) above shall include power to acquire an easement or other right over land by the grant of a new right.
- (4) The Acquisition of Land Act 1981 shall apply to the compulsory acquisition of land under subsection (1) above; and Schedule 3 to that Act shall apply to a compulsory acquisition by virtue of subsection (3) above.

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(5) Part I of the Compulsory Purchase Act 1965, and the enactments relating to compensation for the compulsory purchase of land, shall apply to a compulsory acquisition by virtue of subsection (3) above with the modifications mentioned in paragraph 8(2)(a) and (b) of Schedule 4 to this Act.

(6) In this section—

“apparatus” includes a sewer, drain or tunnel and any structure for the lodging therein of apparatus or for gaining access to apparatus;

“common” includes any land subject to be enclosed under the Inclosure Acts 1845 to 1882, and any town or village green;

“fuel or field garden allotment” means any allotment set out as a fuel allotment, or a field garden allotment, under an Inclosure Act;

“open space” means any land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground; and

“the relevant limits” means the limits of deviation for the scheduled works and the limits of land to be acquired or used.

## **6 Temporary possession and use**

Schedule 5 to this Act (which contains provisions about temporary possession and use of land for the purposes of this Part of this Act) shall have effect.

## **7 Extinguishment of private rights of way**

(1) All private rights of way over land which is held by the Secretary of State as being required for or in connection with the works authorised by this Part of this Act shall be extinguished—

(a) in the case of land held by the Secretary of State immediately before the coming into force of this Act, on the coming into force of this Act, and

(b) in the case of land acquired by the Secretary of State after the coming into force of this Act, at the appropriate time.

(2) For the purposes of subsection (1)(b) above, the appropriate time is the time of acquisition, except where land—

(a) is acquired compulsorily, and

(b) is land in respect of which the power conferred by section 11(1) of the Compulsory Purchase Act 1965 (power of entry following notice to treat) is exercised,

in which case it is the time of entry under that provision.

(3) Any person who suffers loss by the extinguishment of any right of way under this section shall be entitled to be compensated by the nominated undertaker.

(4) Any dispute as to a person’s entitlement to compensation under this section, or as to the amount of such compensation, shall be determined under and in accordance with Part I of the Land Compensation Act 1961.

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

## 8 Extinguishment of rights of statutory undertakers etc

- (1) Sections 271 to 273 of the Town and Country Planning Act 1990 (extinguishment of rights of statutory undertakers etc.) shall apply in relation to land held by the Secretary of State as being land which is required for or in connection with the works authorised by this Part of this Act as they apply in relation to land acquired or appropriated as mentioned in section 271(1) of that Act.
- (2) In the application of sections 271 to 273 of that Act by virtue of subsection (1) above, references to the acquiring or appropriating authority shall be construed as references to the nominated undertaker.
- (3) In their application by virtue of subsection (1) above, sections 271 and 272 of that Act shall also have effect with the following modifications—
  - (a) in subsection (2), for the words from “with” to “appropriated” there shall be substituted “authorised by Part I of the Channel Tunnel Rail Link Act 1996”, and
  - (b) in subsection (5), for the words from “local” to “or undertakers” there shall be substituted “a person other than a Minister, he”.
- (4) In the Town and Country Planning Act 1990, any reference to, or to any provision of, section 271, 272 or 273 shall include a reference to, or to that provision of, that section as applied by subsection (1) above.
- (5) In their application by virtue of subsection (4) above, the following provisions of that Act shall have effect with the following modifications—
  - (a) in section 274(3), for “local authority or statutory undertakers” there shall be substituted “person”, and
  - (b) in sections 274(5), 279(2) to (4) and 280(6), references to the acquiring or appropriating authority shall be construed as references to the nominated undertaker.

### *Planning and heritage*

## 9 Planning: general

- (1) Subject to subsections (2) and (4) below, planning permission shall be deemed to be granted under Part III of the Town and Country Planning Act 1990 for the carrying out of development authorised by this Part of this Act.
- (2) In the case of development consisting of the provision of parking at St. Pancras in London, other than short term parking for coaches or taxis, subsection (1) above shall only apply to development which—
  - (a) is carried out on land within the limits of deviation for Works Nos. 1C, 1CC, 5C, 5D, 5D(1) or 5EE or the land in the London Borough of Camden numbered 37 and 61 on the deposited plans, and
  - (b) does not, when taken together with any other relevant development—
    - (i) so far as involving the provision of parking for cars, involve the provision of more than 750 parking spaces, and
    - (ii) so far as involving the provision of parking for coaches, involve the provision of more than 30 parking spaces.

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- (3) For the purposes of subsection (2)(b) above, relevant development is development consisting of the provision of parking, other than short term parking for coaches or taxis—
- (a) which is carried out on such land as is mentioned in subsection (2)(a) above, and
  - (b) for which planning permission is deemed by subsection (1) above to be granted.
- (4) In the case of development consisting of the provision of a combined international and domestic passenger station and parking at Ebbsfleet in Kent, subsection (1) above shall only apply to development which—
- (a) is carried out on the land in the borough of Dartford, parish of Swanscombe and Greenhithe, numbered 25 to 33 on the deposited plans and the land in the borough of Gravesham, town of Gravesend, numbered 16, 17, 22 to 34, 45, 46, 109, 110 and 112 on those plans, and
  - (b) does not involve the provision of more than 9,000 parking spaces.
- (5) Schedule 6 to this Act (which makes provision about planning conditions) shall have effect in relation to development for which planning permission is deemed by subsection (1) above to be granted, other than development to which subsection (2) or (4) above applies.
- (6) The planning permission deemed by subsection (1) above to be granted shall, so far as relating to development to which subsection (2) or (4) above applies, be deemed to be granted subject to a condition specifying the matters mentioned in subsection (7) below as reserved matters for the subsequent approval of the relevant planning authority.
- (7) The matters referred to above are—
- (a) in the case of development to which subsection (2) above applies, the siting, design and external appearance of, and means of access to, the development, and
  - (b) in the case of development to which subsection (4) above applies, the siting, layout, design, external appearance and landscaping of the development.
- (8) Development for which permission is deemed by this section to be granted shall be treated as not being development of a class for which planning permission is granted by the Town and Country Planning (General Permitted Development) Order 1995 (or any order replacing that order).
- (9) Planning permission which is deemed by this section to be granted shall be treated as specific planning permission for the purposes of section 264(3)(a) of the Town and Country Planning Act 1990 (specific planning permission for the development of statutory undertakers' land relevant to whether the land is operational land).
- (10) In subsections (2) and (4) above, references to development consisting of the provision of parking do not include development consisting of the provision of parking on working sites.
- (11) In subsection (6) above, “relevant planning authority” means—
- (a) in relation to Greater London, the local planning authority, and
  - (b) in relation to Essex or Kent, the district planning authority.

## **10 Permitted development: time limits**

- (1) It shall be a condition of the planning permission deemed by section 9(1) above to be granted, so far as relating to—
  - (a) development consisting of the carrying out of a scheduled work, or
  - (b) development to which section 9(2) or (4) above applies,that the development must be begun not later than the end of 10 years beginning with the day on which this Act is passed.
- (2) The Secretary of State may, in relation to any development to which the condition imposed by subsection (1) above applies, by order extend the period by reference to which the condition operates.
- (3) The power conferred by subsection (2) above shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Nothing in section 91 of the Town and Country Planning Act 1990 (limit on duration of planning permission) shall apply to the planning permission deemed by section 9(1) above to be granted.
- (5) Section 94 of that Act (completion notices) shall apply where development to which section 9(2) or (4) above applies has been begun within the period by reference to which the condition mentioned in subsection (1) above operates, but that period has elapsed without the development having been completed.
- (6) In their application by virtue of subsection (5) above, sections 94(2) and (5) and 95(2) of that Act shall have effect with the insertion after “permission” of “deemed by section 9(1) of the Channel Tunnel Rail Link Act 1996 to be granted, so far as relating to the development,”.

## **11 Fees for planning applications**

- (1) The appropriate Ministers may by regulations make provision about fees for relevant planning applications.
- (2) Regulations under subsection (1) above may, in particular—
  - (a) make provision for the payment to the authority to which a relevant planning application is made of a fee of a prescribed amount,
  - (b) make provision for the remission or refunding of a prescribed fee (in whole or part) in prescribed circumstances,
  - (c) make provision for a prescribed fee to be treated as paid in prescribed circumstances,
  - (d) make provision about the time for payment of a prescribed fee,
  - (e) make provision about the consequences of non-payment of a prescribed fee, including provision for the termination of the application concerned or any appeal against its refusal, and
  - (f) make provision for the resolution of disputes.
- (3) Regulations under subsection (1) above may—
  - (a) make such supplementary, incidental or consequential provision as the appropriate Ministers think fit, and
  - (b) make different provision for different cases.

- (4) The power to make regulations under subsection (1) above shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Nothing in regulations under section 303 of the Town and Country Planning Act 1990 (fees for planning applications) shall apply to a relevant planning application.
- (6) In this section—
- “the appropriate Ministers” means the Secretary of State for the Environment and the Secretary of State for Transport acting jointly;
  - “prescribed” means prescribed in regulations under subsection (1) above; and
  - “relevant planning application” means a request for approval under the planning permission deemed by section 9(1) above to be granted.

## **12 Heritage**

Schedule 7 to this Act (which makes provision for the disapplication or modification, in relation to authorised works, of controls relating to listed buildings, buildings in conservation areas and ancient monuments etc.) shall have effect.

## **13 Heritage: rights of entry**

Schedule 8 to this Act (which makes provision about rights of entry for the Historic Buildings and Monuments Commission for England and the Royal Commission on the Historical Monuments of England) shall have effect.

### *Operation*

## **14 Operation and use of authorised works**

- (1) The nominated undertaker may, in relation to the works authorised by this Part of this Act—
- (a) operate them for the purpose of providing infrastructure services, and
  - (b) use them for the purpose of providing services for the carriage of passengers or goods.
- (2) In subsection (1) above, the reference to infrastructure services is to services which are network services or station services for the purposes of Part I of the Railways Act 1993.

## **15 Bye-laws**

For the purposes of section 129 of the Railways Act 1993 (power of independent railway operator to make bye-laws), the nominated undertaker shall be treated as an independent railway operator.

*Application of railway legislation***16 Licensing**

- (1) Section 6(1) of the Railways Act 1993 (which prohibits any person from acting as the operator of a network, station or train being used on a network unless authorised by a licence under section 8 of that Act) shall not apply in relation to—
  - (a) any network comprised in the rail link,
  - (b) any rail link station, or
  - (c) any train being used, in circumstances in which subsection (2) below applies, on a network comprised in the rail link.
- (2) This subsection applies if—
  - (a) the train is being used to provide a service involving travel through the Channel Tunnel, or
  - (b) the operator of the train is a rail link undertaker and the train is being used to provide a service for the carriage of goods which does not involve carriage outside the rail link.
- (3) There shall not be included in a licence under section 8 of the Railways Act 1993 any condition relating to an activity in respect of which the licence holder is exempt from section 6(1) of that Act by virtue of subsection (1) above; and any condition which is included in such a licence shall be of no effect so far as relating to such an activity.
- (4) For the purposes of subsection (1)(b) above, the following stations are rail link stations—
  - (a) St. Pancras in London,
  - (b) any station constructed for the purposes of the rail link in exercise of the powers conferred by this Part of this Act, and
  - (c) any station constructed for the purposes of the rail link at Stratford, in the London Borough of Newham.
- (5) Any expression used in this section and Part I of the Railways Act 1993 shall have the same meaning in this section as it has in that Part.

**17 Access agreements**

- (1) No directions under section 17(1) of the Railways Act 1993 (which enables the Rail Regulator to direct facility owners to enter into contracts for the use of their railway facilities) may be given to a rail link undertaker in relation to a rail link facility.
- (2) Subject to subsection (3) below, section 18(1) of that Act (which restricts the freedom of a facility owner to enter into an access contract) shall not apply to the entry by a rail link undertaker into an access contract relating to a rail link facility.
- (3) Where only part of a rail link facility is used for the purposes of or in connection with the provision of services on the rail link, subsection (2) above shall only apply if the access contract is restricted to that part of the facility.
- (4) No directions under section 19(1) of that Act (which enables the Rail Regulator to direct installation owners to enter into contracts for the use of their installations) may be given to a rail link undertaker in relation to a network installation comprised in the rail link.



(5) In this section—

“access contract”, “network installation” and “railway facility” have the same meanings as in Part I of the Railways Act 1993; and

“rail link facility” means a railway facility which is used wholly or partly for the purposes of or in connection with the provision of services for the carriage of passengers or goods on the rail link.

## 18 Closures

The following provisions of the Railways Act 1993—

section 38 (proposals to discontinue franchised etc. passenger services), and section 48(3) (duties in relation to discontinuation of certain experimental passenger services),

shall not have effect in relation to services which involve travel on the rail link.

## 19 Railway administration orders

(1) In section 59 of the 1993 Act (which defines a railway administration order as a court order under section 60, 61 or 62 of that Act in relation to a protected railway company) subsection (6) (paragraph (a) of which defines a “protected railway company” and paragraph (b) of which defines its “relevant activities”) shall have effect, in relation to a rail link service operator—

- (a) with the omission, in paragraph (a), of “both” and the words from “and the” to the end, and
- (b) with the substitution for paragraph (b)(i) and (ii) of “its activities as the operator of a railway asset”.

(2) For the purposes of the following provisions, namely—

- (a) sections 60(1)(b), 61(1)(a)(ii) and (2)(b), and 62(2)(a)(ii), (3)(b), (5)(a)(ii), (6)(b) and (7)(b) of the 1993 Act, and
- (b) sections 13(3)(b), 18(1)(b) and 27(1A) of the 1986 Act, as applied by Schedule 6 to the 1993 Act,

(which give the Director of Passenger Rail Franchising a role in relation to a protected railway company which is the holder of a passenger licence) a rail link service operator which is the holder of a passenger licence shall be treated as if it were not the holder of such a licence.

(3) Section 60 of the 1993 Act (railway administration orders made on special petitions), in its application to a rail link service operator, shall have effect with the following modifications—

- (a) in subsection (1), for “either or both” there shall be substituted “any”,
- (b) in subsection (2), at the end there shall be inserted—
  - “(c) that an agreement between the Secretary of State and a relevant rail link undertaker has terminated.”, and
- (c) in subsection (7), at the end there shall be inserted—

““rail link” has the same meaning as in the Channel Tunnel Rail Link Act 1996;

“relevant rail link undertaker” means a person who, under section 34 of that Act, is the nominated undertaker for any purpose of section 1(1) or 14(1)(a) of that Act, so far as relating to the rail link.”

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- (4) Section 17 of the 1986 Act (duties of administrator), as applied by Schedule 6 to the 1993 Act, shall have effect, in relation to the administration of a rail link service operator, with the insertion after subsection (2) of—

“(2A) Subsection (2) shall only apply if the proposals have been approved by the Secretary of State and, where he approves them with modifications, shall apply as if the proposals prepared for the purposes of section 23 were the proposals as so modified.”

- (5) The following provisions of the 1986 Act, as applied by Schedule 6 to the 1993 Act, namely, sections 18(4), 21(2), 23(1) and (2) and 27(6) (which require documents to be sent to specified persons) shall not have effect to require any document relating to a rail link service operator to be sent to the Director of Passenger Rail Franchising.
- (6) In Schedule 7 to the 1993 Act (transfer of relevant activities in connection with railway administration orders) paragraph 2 (making and modification of transfer schemes) shall have effect, where the company in relation to which a railway administration order has been made is a rail link service operator, with the following modifications—
- (a) in sub-paragraph (2), the words from “or” to the end shall be omitted,
  - (b) in sub-paragraph (3), the words “or the Franchising Director” shall be omitted,
  - (c) in sub-paragraph (6), the words “or the Franchising Director” shall be omitted, and
  - (d) in sub-paragraph (7), the words from “or, in a” to “Director” shall be omitted.
- (7) An agreement by the Secretary of State shall be effective notwithstanding that, in the case of a rail link service operator, it fetters the Secretary of State in relation to a discretion under sections 60 to 65 of, and Schedules 6 and 7 to, the 1993 Act (the railway administration order provisions of the Act).
- (8) The Secretary of State may by order repeal subsection (4) above.
- (9) The power conferred by subsection (8) above shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) In this section—

“operator”, in relation to a railway asset, means the person having the management of that railway asset for the time being;

“passenger licence” and “railway asset” have the same meanings as in Part I of the 1993 Act;

“rail link service operator” means a person who, under section 34 below, is the nominated undertaker for any purpose of section 14(1)(b) above, so far as relating to the rail link;

“the 1986 Act” means the Insolvency Act 1986; and

“the 1993 Act” means the Railways Act 1993.

## 20 Other legislation

Schedule 9 to this Act (which makes provision with respect to the incorporation of the Railways Clauses Acts and the application of miscellaneous other enactments relating to railways) shall have effect.

### *Functions of the Rail Regulator*

#### **21 Duties as to exercise of regulatory functions**

- (1) The Rail Regulator shall have an overriding duty to exercise his regulatory functions in such a manner as not to impede the performance of any development agreement.
- (2) In exercising his regulatory functions in relation to the use by a rail link undertaker of any existing network—
  - (a) for trains used in connection with the construction of the rail link, or
  - (b) for trains used to provide international services,the Rail Regulator shall also be under a duty to have regard to the financial position of the rail link undertaker.
- (3) The Rail Regulator may by notice require a person to whose financial position he is required by subsection (2) above to have regard to furnish to him, in such form and manner as may be specified in the notice, such information relating to that person's financial position as may be so specified, being information which the Rail Regulator considers necessary for the purpose of facilitating the performance of his duty under that subsection.
- (4) If any person makes default in complying with a notice under subsection (3) above, the High Court may, on the application of the Rail Regulator, make such order as it thinks fit for requiring the default to be made good.
- (5) An order under subsection (4) above may provide that all the costs or expenses of and incidental to the application under that subsection shall be borne by the person in default or, in the case of a company or other association, by any of its officers who are responsible for its default.
- (6) In this section—
  - “existing”, in relation to a network, means not comprised in the rail link;
  - “international services” means services involving travel through the Channel Tunnel;
  - “network” has the same meaning as in Part I of the Railways Act 1993; andreferences to the Rail Regulator's regulatory functions are to the functions assigned or transferred to him under or by virtue of Part I of the Railways Act 1993.

#### **22 Restriction of functions in relation to competition etc**

- (1) The Rail Regulator shall not be entitled to exercise any functions under section 67(1) of the Railways Act 1993 (under which he may be required to exercise the Director General of Fair Trading's consumer protection functions under Part III of the Fair Trading Act 1973, so far as relating to courses of conduct detrimental to consumers of railway services) in relation to a course of conduct persisted in by a rail link undertaker in relation to the supply of railway services, so far as relating to the rail link.
- (2) The functions of the Rail Regulator, so far as relating to monopoly situations which exist or may exist in relation to the supply of railway services, shall not be exercisable by him in relation to the supply by a rail link undertaker of railway services, so far as relating to the rail link.

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*Status: This is the original version (as it was originally enacted).*

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- (3) The functions of the Rail Regulator, so far as relating to courses of conduct which have or are intended to have or are likely to have the effect of restricting, distorting or preventing competition in connection with the supply of railway services, shall not, in the case of a course of conduct pursued by a rail link undertaker, be exercisable by the Regulator by reference to the effect of the course of conduct on the supply of railway services, so far as relating to the rail link.
- (4) Section 67(4) of the Railways Act 1993 (duty of the Director General of Fair Trading to consult the Rail Regulator about the exercise of concurrent functions) shall not have effect to require the Director to consult the Regulator about the exercise of any function which the Regulator is prevented by subsection (2) or (3) above from exercising.
- (5) In this section, “railway services” has the same meaning as in the Railways Act 1993.

### *Competition*

## **23 Restrictive trade practices**

- (1) The Restrictive Trade Practices Act 1976 (“the 1976 Act”) shall not apply to any development agreement and shall be deemed never to have applied to any such agreement.
- (2) Where two or more persons are specified under section 34 below as the nominated undertaker for the same purpose of the same provision, the Secretary of State may by order provide that the persons so specified and any body corporate which is a member of the same group as any of them shall be deemed to be members of one and the same group of interconnected bodies corporate for the purposes of the 1976 Act in relation to any scheduled works agreement.
- (3) Section 24 of the 1976 Act (time limit for registering particulars of agreements subject to registration) shall apply in relation to an agreement which becomes subject to registration under that Act by virtue of the revocation of an order under subsection (2) above as it applies in relation to an agreement which becomes subject to registration under that Act by virtue of the expiry or revocation of an order under section 29 of that Act (power to exempt agreements of importance to the national economy from registration).
- (4) The Secretary of State may, in relation to a scheduled works agreement, make an order under section 29 of the 1976 Act after, as well as on or before, the conclusion of the agreement; and, on the coming into force of an order made by virtue of this subsection, that Act shall be deemed not to have applied to the agreement concerned.
- (5) Before making an order under section 29 of the 1976 Act in relation to a scheduled works agreement, the Secretary of State shall consult the Director General of Fair Trading.
- (6) Section 29(2) of the 1976 Act (conditions which the Secretary of State must be satisfied are met before approving an agreement) shall have effect, in relation to a scheduled works agreement, with the substitution for paragraph (b) of—
  - “(b) that its object or main object is the facilitation of the design, construction, financing, maintenance or operation of any of the scheduled works within the meaning of the Channel Tunnel Rail Link Act 1996;”.

- (7) Without prejudice to the powers of revocation conferred by subsection (5) of section 29 of the 1976 Act, the Secretary of State may at any time by order revoke an order made under that section in relation to a scheduled works agreement if—
  - (a) he is requested to do so by a party to the agreement, and
  - (b) he has given to each of the parties to the agreement at least 28 days' notice of his intention to make the order.
- (8) Where the Secretary of State approves a scheduled works agreement for the purposes of section 29 of the 1976 Act, he may by order provide that, in relation to any agreement made in pursuance of the approved agreement which is of a class specified in the order, such of the parties to the approved agreement as may be so specified and any body corporate which is a member of the same group as any of them shall be deemed to be interconnected bodies corporate for the purposes of that Act.

## **24 Monopoly situations**

- (1) Where two or more persons are specified under section 34 below as the nominated undertaker for the same purpose of the same provision, the Secretary of State may by order provide that the persons so specified and any body corporate which is a member of the same group as any of them shall be deemed to be members of one and the same group of interconnected bodies corporate for the purposes of the relevant monopoly provisions of the Fair Trading Act 1973 (“the 1973 Act”).
- (2) Where the Secretary of State approves a scheduled works agreement for the purposes of section 29 of the Restrictive Trade Practices Act 1976, he may by order provide that, in relation to any relevant goods or services, such of the parties to the agreement as may be specified in the order and any body corporate which is a member of the same group as any of them shall be deemed for the purposes of the relevant monopoly provisions of the 1973 Act to be members of one and the same group of interconnected bodies corporate.
- (3) In subsection (2) above, the reference to any relevant goods or services is to any goods or services which are—
  - (a) supplied in connection with the design, construction, financing, maintenance or operation of any of the scheduled works, and
  - (b) of a description specified in the order.
- (4) For the purposes of subsections (1) and (2) above, the relevant monopoly provisions of the 1973 Act are sections 6(1)(b) (monopoly situation in relation to the supply of goods by or to members of one and the same group of interconnected companies) and 7(1)(b) (corresponding provision in relation to the supply of services).

## **25 Anti-competitive practices**

- (1) Where two or more persons are specified under section 34 below as the nominated undertaker for the same purpose of the same provision, the Secretary of State may by order provide that the persons so specified and any body corporate which is a member of the same group as any of them shall be deemed to be persons who are to be treated as associated for the purposes of section 2 of the Competition Act 1980.
- (2) Where the Secretary of State approves a scheduled works agreement for the purposes of section 29 of the Restrictive Trade Practices Act 1976, he may by order provide that, in relation to any relevant course of conduct, such of the parties to the agreement

as may be specified in the order and any body corporate which is a member of the same group as any of them shall be deemed to be persons who are to be treated as associated for the purposes of section 2 of the Competition Act 1980.

- (3) In subsection (2) above, the reference to any relevant course of conduct is to any course of conduct engaged in in connection with the design, construction, financing, maintenance or operation of any of the scheduled works.

## **26 Sections 23 to 25: supplementary provisions**

- (1) Before exercising the power conferred by section 23(2) or (8), 24(1) or (2) or 25(1) or (2) above, the Secretary of State shall consult the Director General of Fair Trading.
- (2) An order under section 23(2) or (8), 24(1) or (2) or 25(1) or (2) above may impose, on any person to whom any provision made under that subsection relates, such requirements as the Secretary of State considers it expedient to impose in connection with that provision.
- (3) Subsections (3) and (4) of section 93 of the Fair Trading Act 1973 (enforcement of directions) shall apply in relation to requirements imposed under subsection (2) above as they apply in relation to directions under section 90(7) of that Act.
- (4) Orders under section 23(2) or (8), 24 or 25 above, and orders made by virtue of section 23(4) above, shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) In sections 23 to 25 above, “group” means a body corporate and all other bodies corporate which are its subsidiaries within the meaning of the Companies Act 1985.

### *Trees*

## **27 Power to deal with trees on neighbouring land**

- (1) Where any tree overhangs land used for the purposes of the nominated undertaker’s undertaking under this Part of this Act, the nominated undertaker may by notice to the occupier of the land on which the tree is growing require the tree to be removed, topped or lopped if it is necessary for that to be done—
- (a) to enable the works authorised by this Part of this Act to be maintained, or
  - (b) for reasons of safety in connection with the operation of any railway comprised in those works.
- (2) If, within the period of 28 days beginning with the giving by the nominated undertaker of a notice under subsection (1) above, the occupier of the land on which the tree to which the notice relates is growing gives the nominated undertaker a counter-notice objecting to the removal, topping or lopping of the tree, the notice shall have effect only if confirmed by an order of the county court.
- (3) If at any time a notice under subsection (1) above has not been complied with and either—
- (a) a period of 28 days beginning with the giving of the notice has expired without a counter-notice having been given, or
  - (b) an order of the court confirming the notice has come into force,

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the nominated undertaker may itself cause the tree to which the notice relates to be removed, topped or lopped as mentioned in subsection (1) above.

- (4) Where the power conferred by subsection (3) above is exercisable in relation to any tree, the nominated undertaker may—
- (a) enter the land on which the tree is growing for the purpose of exercising that power in relation to it, and
  - (b) take with it such vehicles and equipment as are necessary for that purpose.
- (5) Where the nominated undertaker tops or lops a tree in exercise of the power conferred by subsection (3) above, it shall do so in a husband-like manner and in such a way as to cause the minimum of damage to the tree.
- (6) Where—
- (a) a notice under subsection (1) above is complied with either without a counter-notice having been given or after the notice has been confirmed, or
  - (b) the nominated undertaker exercises the power conferred by subsection (3) above,

the county court shall, on application made by a person who has suffered loss or damage in consequence of the removal, topping or lopping of the tree concerned or who has incurred expenses in complying with the notice, order the nominated undertaker to pay that person such compensation in respect of the loss, damage or expenses as it thinks fit.

## **28 Disapplication of controls**

- (1) The following, namely—
- (a) an order under section 198(1) of the Town and Country Planning Act 1990 (tree preservation orders), and
  - (b) section 211(1) of that Act (which prohibits the doing in a conservation area of any act which might be prohibited by a tree preservation order),
- shall not apply to any tree works which are authorised for the purposes of this section.
- (2) Tree works are authorised for the purposes of this section if—
- (a) they are carried out in compliance with a notice under subsection (1) of section 27 above or in exercise of the power conferred by subsection (3) of that section,
  - (b) they are carried out in relation to a tree growing on land within the relevant limits and for the purposes of or in connection with the construction of the works authorised by this Part of this Act, or
  - (c) they are carried out in relation to a tree growing on land used for the purpose of the nominated undertaker's undertaking under this Part of this Act and in circumstances where it is necessary for them to be carried out—
    - (i) to enable the works authorised by this Part of this Act to be maintained, or
    - (ii) for reasons of safety in connection with the operation of any railway comprised in those works.
- (3) In subsection (2)(b) above, the reference to land within the relevant limits is to land within the limits of deviation for the scheduled works or within the limits of land to be acquired or used.

- (4) In this section, references to tree works are to works consisting of the removal, topping or lopping of a tree.

### *Noise*

## **29 Control of construction sites: appeals**

- (1) In the Control of Pollution Act 1974, sections 60 (control of noise on construction sites) and 61 (prior consent for work on construction sites) shall have effect, in relation to works carried out in exercise of the powers conferred by this Part of this Act, with the following modifications.
- (2) In subsection (7) (appeal against failure to give consent or the giving of qualified consent), for “a magistrates' court” there shall be substituted “the Secretary of State”.
- (3) After that subsection there shall be inserted—
- “(7A) If within seven days of the giving of notice of appeal under subsection (7) of this section the appellant and the local authority so agree, the appeal shall, instead of being determined by the Secretary of State, be referred to arbitration.”
- (4) The Secretary of State for the Environment and the Secretary of State for Transport acting jointly may by regulations made by statutory instrument make in relation to appeals which are referred to arbitration under subsection (7A) of section 60 or 61 of the Control of Pollution Act 1974 any such provision as may be made by regulations under section 70 of that Act in relation to appeals under Part III of that Act to the Secretary of State.

## **30 Proceedings in respect of statutory nuisance: defence**

- (1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990 (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 nominated undertaker for the purposes of or in connection with the exercise of the powers conferred by this Part of this Act with respect to works, and
  - (b) that the nuisance is attributable to the carrying out of works which are being carried out in accordance with a notice served under section 60, or a consent given under section 61 or 65, of the Control of Pollution Act 1974.
- (2) The following provisions of the Control of Pollution Act 1974, namely—
- (a) section 61(9) (consent for work on construction site to include 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 nominated undertaker for the purposes of or in connection with the exercise of the powers conferred by this Part of this Act with respect to works.



### *Financial matters*

#### **31 Expenditure in connection with securing construction of works**

- (1) The Secretary of State may make payments under any agreement entered into by him for the purpose of securing the construction of—
  - (a) any of the works authorised by this Part of this Act, or
  - (b) any related works.
- (2) For the purposes of this section, the following are related works—
  - (a) a station at Stratford, in the London Borough of Newham, for use in connection with the rail link, and
  - (b) a railway providing access between the rail link and the West Coast Main Line by means of a connection to the North London Line.

#### **32 Reserved capacity on the rail link: expenditure**

- (1) The Secretary of State may make payments to the nominated undertaker, or its nominee, in pursuance of an agreement for the payment, for such period as may be specified in the agreement, of such sum as may be so specified for the reservation of rights of use in relation to the rail link.
- (2) The Secretary of State may make, to any person charged with responsibility in relation to the selection of persons to exercise rights of use in relation to the rail link which are reserved to the Secretary of State under an agreement with the nominated undertaker (“reserved rights of use”), such payments in respect of the discharge of that responsibility as the Secretary of State thinks fit.
- (3) The Secretary of State may give to any person exercising reserved rights of use such financial assistance in relation to the exercise of those rights as he thinks fit.
- (4) Financial assistance under subsection (3) above shall be on such terms and subject to such conditions as the Secretary of State thinks fit.

#### **33 Undertakings with respect to financial assistance etc**

- (1) Any undertaking of the Secretary of State which—
  - (a) is given with respect to applications for assistance of a kind to which subsection (2) below applies, and
  - (b) is contained in a development agreement,shall be effective notwithstanding that it fetters his discretion.
- (2) This subsection applies to—
  - (a) any kind of financial or other assistance in relation to an existing railway line which might allow it to be used to provide a line speed in excess of 200 kilometres per hour before 31st December 2030, and
  - (b) any kind of financial or other assistance which before that date would enable or assist a person to provide services or facilities for international rail passenger services.

*Miscellaneous and general***34 Holder of functions of nominated undertaker**

- (1) The Secretary of State may by order provide that a person specified in the order shall be the nominated undertaker for such purposes of such provisions of this Part of this Act as may be so specified.
- (2) Where, in the case of any provision of this Part of this Act which refers to the nominated undertaker, there is any purpose of the provision for which there is no one who is the nominated undertaker under subsection (1) above, any reference in the provision to the nominated undertaker shall be construed, in relation to that purpose, as a reference to the Secretary of State.
- (3) An agreement by the Secretary of State with respect to the exercise of his discretion under subsection (1) above shall be effective notwithstanding that it fetters his discretion.
- (4) An order under subsection (1) above may contain such supplementary, incidental, consequential or transitional provision as the Secretary of State considers necessary or expedient in connection with the order.
- (5) The Secretary of State may by order make such modifications of any provision of this Part of this Act referring to the Secretary of State, so far as applying for a purpose in relation to which subsection (2) above has effect, as appear to him to be necessary or expedient in consequence of his having functions by virtue of that subsection.
- (6) The power to make an order under this section shall be exercisable by statutory instrument.
- (7) A statutory instrument containing an order under subsection (5) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**35 Transfer of functions relating to works**

- (1) If the Secretary of State acquires any land for the purposes of this Part of this Act from a railway operator and there are situated on the land works authorised by statute, he may by order provide for the transfer of any statutory power or duty relating to the works previously exercisable by the railway operator—
  - (a) to him, or
  - (b) to a person specified under section 34 above.
- (2) The Secretary of State may by order provide for the further transfer—
  - (a) to him, or
  - (b) to a person specified under section 34 above,of a power or duty transferred under subsection (1) above or this subsection.
- (3) If a railway operator acquires from the Secretary of State any land on which there are situated works authorised by this Part of this Act, the Secretary of State may, with the consent of the railway operator, by order provide for the transfer to the railway operator of any duty under this Part of this Act relating to the works.
- (4) An order under this section may contain such supplementary, incidental, consequential or transitional provision as the Secretary of State considers necessary or expedient in connection with the order.

- (5) In subsections (1) and (3) above, references to a railway operator are to a person who has the management for the time being of any network, station or light maintenance depot.
- (6) In this section, “light maintenance depot”, “network” and “station” have the same meanings as in Part I of the Railways Act 1993.

### **36 Compensation for injurious affection**

Section 10(1) of the Compulsory Purchase Act 1965 (compensation for injurious affection) shall have effect, in relation to land injuriously affected by the execution of works under this Part of this Act, with the substitution for “acquiring authority have” of “nominated undertaker has”.

### **37 Duty to co-operate**

- (1) Where the nominated undertaker considers that a matter affects—
- (a) the construction, maintenance or operation of the rail link, and
  - (b) the construction, maintenance or operation of a railway asset which is not a rail link asset,
- it may by notice in writing require the operator of the asset to enter into an agreement with it about how the matter is to be dealt with.
- (2) Where the operator of a railway asset which is not a rail link asset considers that a matter affects—
- (a) the construction, maintenance or operation of the asset, and
  - (b) the construction, maintenance or operation of the rail link,
- it may by notice in writing require the nominated undertaker to enter into an agreement with it about how the matter is to be dealt with.
- (3) The terms of an agreement under subsection (1) or (2) above shall be such as the nominated undertaker and the operator of the asset may agree or, in default of agreement, as may be determined by arbitration.
- (4) For the purposes of subsections (1) and (2) above a railway asset is a rail link asset if—
- (a) in the case of a railway asset consisting of any network, station or light maintenance depot, it is comprised in the rail link, and
  - (b) in the case of a railway asset consisting of any train being used on a network, the network is comprised in the rail link.
- (5) In this section—
- “light maintenance depot”, “network”, “railway asset” and “station” have the same meanings as in Part I of the Railways Act 1993; and
  - “operator”, in relation to a railway asset, means the person having the management of the asset for the time being.

### **38 Disapplication and modification of miscellaneous controls**

Schedule 10 to this Act (which makes provision for the disapplication and modification of miscellaneous statutory and other controls in relation to things done

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under this Part of this Act and otherwise for the purposes of this Part of this Act) shall have effect.

### **39 Burial grounds**

- (1) Nothing in any enactment relating to burial grounds and no obligation or restriction imposed under ecclesiastical law or otherwise shall have effect to prohibit, restrict or impose any condition on the use of any land comprised in a burial ground for the purpose of constructing any of the works authorised by this Part of this Act.
- (2) Subsection (1) above shall not apply in relation to land in which human remains are interred unless—
  - (a) the remains have been removed and reinterred or cremated in accordance with the provisions of Schedule 11 to this Act, and
  - (b) any monument to the deceased has been dealt with in accordance with those provisions,
 and the other requirements of that Schedule, so far as relating to the nominated undertaker, have been complied with.
- (3) Subsection (2) above shall not apply where the use of the land for the purpose mentioned in subsection (1) above does not involve disturbing the human remains which are interred in it.
- (4) In this section (and Schedule 11 to this Act)—
 

“enactment” includes an enactment in any local or private Act of Parliament, and an order, rule, regulation, byelaw or scheme made under an Act of Parliament; and

“monument” includes a tombstone or other memorial;

 and references to a monument to any person are to a monument commemorating that person, whether or not also commemorating any other person.

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

- (1) No enactment or rule of law regulating the rights and obligations of landlords and tenants shall apply in relation to the rights and obligations of the parties to a development agreement lease or a lease to which subsection (2) below applies—
  - (a) so as to 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) so as to confer or impose on either 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) so as to restrict the enforcement (whether by action for damages or otherwise) by either party to the lease of any obligation of the other party under the lease.
- (2) This subsection applies to a lease if it is granted by the Secretary of State and—
  - (a) it is one on the grant of which a development agreement, or an agreement connected with such an agreement, is conditional, or
  - (b) it contains a statement to the effect that it is granted for purposes connected with the construction or operation of the rail link.

(3) In this section, “development agreement lease” means a lease granted by the Secretary of State in pursuance of a development agreement, or an agreement connected with such an agreement, and references to a development agreement lease include any provisions of a development agreement, or an agreement connected with such an agreement, providing for the grant of a lease of any land by the Secretary of State.

(4) For the purposes of this section, an agreement is connected with a development agreement if the development agreement is expressed to be conditional upon it being entered into.

(5) This section shall be deemed to have come into force on 4th July 1995.

#### **41 Variation of development agreement: disapplication of s.2 of Law of Property (Miscellaneous Provisions) Act 1989**

(1) Section 2(1) to (6) of the Law of Property (Miscellaneous Provisions) Act 1989 (under which a contract for the sale etc. of land can only be made by incorporating all the terms agreed in one document) shall not apply in relation to the variation of a development agreement.

(2) This section shall be deemed to have come into force on 31st May 1996.

#### **42 Related works: application of section 9 of the Transport and Works Act 1992**

(1) If an application under section 6 of the Transport and Works Act 1992 (application for an order under section 1 of that Act) is made by a relevant undertaker, section 9 of that Act (procedure where the Secretary of State considers an application relates to proposals of national significance) shall have effect in relation to the application with the insertion at the end of subsections (1) and (2) of “or relate to, or to matters ancillary to, the construction of works which are related works for the purposes of section 31 of the Channel Tunnel Rail Link Act 1996”.

(2) In subsection (1) above, the reference to a relevant undertaker is to a person who, under section 34 above, is the nominated undertaker for any purpose of section 1(1) above, so far as relating to the rail link.

#### **43 Arbitration**

(1) Where under this Part of this Act any difference is to be referred to arbitration, the difference shall be referred to, and settled by, a single arbitrator to be agreed between the parties or, in default of agreement, to be appointed on the application of either party, after notice in writing to the other, by the President of the Institution of Civil Engineers.

(2) The Secretary of State for the Environment and the Secretary of State for Transport acting jointly may by rules made by statutory instrument make provision about procedure in relation to arbitration under this Part of this Act.