
STATUTORY INSTRUMENTS

1998 No. 1936

The Greater Manchester (Light Rapid Transit System) (Ashton-under-Lyne Extension) Order 1998

PART V

PROTECTIVE PROVISIONS

For protection of Railtrack

42.—(1) For the protection of Railtrack the following provisions shall, unless otherwise agreed in writing between the undertaker and Railtrack, have effect.

(2) In this article—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer to be appointed by Railtrack;

“plans” includes sections, designs, drawings, specifications, soil reports, calculations and descriptions (including descriptions of methods of construction), staging proposals and programmes;

“Railtrack” means Railtrack PLC and any associated company of Railtrack PLC which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 736 of the Companies Act 1985⁽¹⁾) the holding company of Railtrack PLC, a subsidiary of Railtrack PLC or another subsidiary of the holding company of Railtrack PLC;

“railway property” means any railway of Railtrack and any works, apparatus and equipment of Railtrack connected therewith and includes any land held or used by Railtrack for the purposes of such railway or works, apparatus or equipment;

“specified works” means so much of the authorised works and any reconstruction of Work No. 7 authorised by the Greater Manchester (Light Rapid Transit System) Act 1988⁽²⁾ as may be required for the purposes of or in connection with the authorised works as may be situated upon, across, under, over or within 15 metres of, or may in any way affect, railway property;

“the Station” means Railtrack’s Piccadilly Station in Manchester.

(a) (3) (a) The undertaker shall not under the powers of this Order or otherwise for the purposes of the specified works at the Station acquire or use or acquire new rights over any railway property except with the consent of Railtrack which shall not be unreasonably withheld but may be given subject to reasonable conditions.

(b) The undertaker shall fence off on a temporary and permanent basis the specified works from railway property to the reasonable satisfaction of the engineer where so required by him.

(1) 1985 c. 6.

(2) 1988 c.i.

(4) The undertaker shall not exercise the power of article 23 above or the powers of section 11(3) of the 1965 Act in respect of any railway property except with the consent of Railtrack which consent shall not be unreasonably withheld but may be given subject to reasonable conditions.

- (a) (5) (a) Except with the consent of Railtrack the undertaker shall not in the exercise of the powers of this Order prevent pedestrian or vehicular access to the Station or any other railway property.
- (b) The undertaker shall not exercise the powers of sections 271 or 272 of the Town and Country Planning Act 1990(3), as applied by Schedule 10 to this Order, in relation to any right of access of Railtrack to railway property but such right of access may be diverted with the consent of Railtrack.
- (c) The consent of Railtrack under this paragraph shall not be unreasonably withheld but may be given subject to reasonable conditions.
- (a) (6) (a) The undertaker shall before commencing construction of the specified works supply to Railtrack proper and sufficient plans for the reasonable approval of the engineer and shall not commence such construction of the specified works until plans thereof have been approved in writing by the engineer or settled by arbitration.
- (b) The approval of the engineer under this paragraph shall not be unreasonably withheld or delayed and if within 56 days after such plans have been supplied to Railtrack the engineer has not intimated his disapproval thereof and the grounds of his disapproval he shall be deemed to have approved the same.

(7) If within 56 days after such plans have been supplied to Railtrack, Railtrack gives notice to the undertaker that Railtrack desires itself to construct any part of the specified works which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Railtrack then, if the undertaker desires such part of the specified works to be constructed, Railtrack shall construct the same (together with any adjoining part of the specified works which the undertaker reasonably requires to be constructed in one operation with those works) with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled as aforesaid and under the supervision (where appropriate and if given) of the undertaker.

(8) Upon signifying his approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before the commencement of the specified works to ensure the safety or stability of railway property, the continuation of safe and efficient operation of the railways of Railtrack and the Station or the services of operators using the same (including any relocation of works, apparatus and equipment necessitated by the specified works) and such protective works as may be reasonably necessary for those purposes shall be constructed by Railtrack or by the undertaker, if Railtrack so desires, with all reasonable dispatch and the undertaker shall not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to his reasonable satisfaction.

- (9) The specified works shall, when commenced, be constructed—
 - (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled as aforesaid,
 - (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer,
 - (c) in such manner as to cause as little damage to railway property as may be, and

- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe user of any railway of Railtrack or the traffic thereon, the operation of the Station and the use by passengers of railway property;

and, if any damage to railway property or any such interference or obstruction is caused or takes place in consequence of the construction of the specified works, the undertaker shall, notwithstanding any such approval as aforesaid, make good such damage and shall pay to Railtrack all reasonable expenses to which it may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(10) The undertaker shall—

- (a) at all times afford reasonable facilities to the engineer for access to the specified works during their construction; and
- (b) supply the engineer with all such information as he may reasonably require with regard to the specified works or the method of construction thereof.

(11) Railtrack shall at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Railtrack under this article during their construction and shall supply the undertaker with such information as it may reasonably require with regard to such works or the method of construction thereof.

- (a) (12) (a) If any alterations or additions, either permanent or temporary, to railway property are reasonably necessary during the construction of the specified works or during a period of 12 months after the completion thereof in consequence of the construction of the specified works, and Railtrack gives to the undertaker reasonable notice of its intention specifying the alterations or additions to be carried out the undertaker shall pay to Railtrack the reasonable cost thereof including, in respect of permanent alterations and additions, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Railtrack in maintaining, working and, when necessary, renewing any such alterations or additions.
- (b) The engineer shall in respect of the capitalised sums referred to in this paragraph and paragraph (13)(a) below, provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.
- (c) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving shall be set off against any sum payable by the undertaker to Railtrack under this paragraph.

(13) The undertaker shall repay to Railtrack all reasonable fees, costs, charges and expenses reasonably incurred by Railtrack—

- (a) in constructing any part of the specified works on behalf of the undertaker as provided by paragraph (7) above or in constructing any protective works under the provisions of paragraph (8) above including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works,
- (b) in respect of the employment of any inspectors, signalmen, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, watching, lighting and signalling railway property and for preventing as far as may be all interference, obstruction, danger or accident arising from the construction, maintenance, or failure of the specified works,
- (c) in respect of any special traffic working resulting from any speed restrictions which are necessary as a result of the construction, maintenance, or failure of the specified works and which may in the opinion of the engineer be required to be imposed or from the substitution, suspension or diversion of services which may be necessary for the same reason,

- (d) in respect of any additional temporary lighting of railway property in the vicinity of the specified works being lighting made reasonably necessary as a result of the specified works or the failure thereof, and
- (e) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by him of the construction of the specified works.

(14) If at any time after the completion of the specified works, not being works vested in Railtrack, Railtrack gives notice to the undertaker informing it that the state of maintenance of the specified works appears to be such as adversely affects the operation of railway property, the undertaker shall, on receipt of such notice, take such steps as may be reasonably necessary to put the specified works in such state of maintenance as not adversely to affect railway property.

(15) All temporary structures, erections, works, apparatus and appliances erected or placed by the undertaker under the powers of the Order upon, over or under any railway of Railtrack shall, as soon as reasonably practicable, be removed by the undertaker at times to be agreed with, and to the reasonable satisfaction of, the engineer and in such a way as to cause as little damage to railway property and as little interference with or delay or interruption to, the traffic on the railways of Railtrack as may be; and if any damage to railway property or such interference, delay or interruption is caused by any such failure to remove any such temporary structures, erections, works, apparatus or appliances, the undertaker shall forthwith make good such damage and pay to Railtrack the reasonable costs and expenses to which it may be put and reasonable compensation for any loss which it may sustain by reason of such damage, interference, delay or interruption.

(16) If it is necessary for the protection and safety of railway property for Railtrack to purchase any minerals for the support of such property or to pay compensation for any minerals to be left unworked for the support thereof and the specified works also derive support from such minerals, the undertaker shall repay to Railtrack a reasonable proportion of the amount paid by Railtrack for or in respect of such minerals and the costs and expenses incurred by Railtrack in relation to any such purchase or payment of compensation.

(17) Before providing any illumination or illuminated traffic sign on or in connection with the specified works in the vicinity of any railway of Railtrack the undertaker shall consult with Railtrack and comply with its reasonable requirements for preventing confusion between such illumination or illuminated sign and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

(18) Any additional expenses which Railtrack may reasonably incur after giving 56 days' notice to the undertaker in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of the specified works shall be repaid by the undertaker to Railtrack.

(19) The undertaker shall be responsible for and make good to Railtrack all reasonable costs, charges, damages and expenses not otherwise provided for in this article which may be occasioned to or reasonably incurred by Railtrack—

- (a) by reason of the construction or maintenance of the specified works or the failure thereof, or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the specified works;

and the undertaker shall indemnify Railtrack from and against all claims and demands arising out of or in connection with the specified works or any such failure, act or omission as aforesaid and the fact that any act or thing may have been done by Railtrack on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision shall not (if it was done without negligence on the part of Railtrack or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph.

(20) Railtrack shall give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the undertaker.

- (a) (21) (a) The compensation payable under paragraph (19) above shall include a sum equivalent to the relevant costs.
- (b) Subject to the terms of any agreement between Railtrack and any train operator regarding the terms of payment of the relevant costs in respect of that train operator, Railtrack shall promptly pay to each train operator the amount of any compensation which Railtrack receives under this paragraph which relates to the relevant costs of that train operator.
- (c) In this paragraph “relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of use of Railtrack’s railway network as a result of the construction or maintenance or failure of the specified works or any such failure, act or omission as mentioned in paragraph (19) above.
- (d) The obligation under this paragraph to pay Railtrack the relevant costs shall, in the event of default, be enforceable direct by the train operator concerned.

(22) In the assessment of compensation payable under this article there shall not be taken into account any enhancement of that compensation attributable to any action taken or any agreement entered into by Railtrack if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining compensation or increased compensation and for the avoidance of doubt any reference in this paragraph to compensation shall be deemed to relate to any payment due to Railtrack under this article.

- (a) (23) (a) Section 41 (For protection of British Railways Board) of the Greater Manchester (Light Rapid Transit System) Act 1988(4) in its application to Railtrack shall not apply to any reconstruction of Work No. 7 authorised by that Act which forms part of the specified works.
- (b) Section 42 (For further protection of British Railways Board) of the Greater Manchester (Light Rapid Transit System) Act 1988 shall have effect with the substitution of references to Railtrack for references to the railways board and as if the references therein to the light rapid transit system and to works authorised by that Act included references to the specified works and to any parts of the railways of Railtrack transferred to, and vested in, the undertaker by agreement with Railtrack under this Order.

(24) The undertaker and Railtrack may enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the Order plans and described in the book of reference,
- (b) any lands, works or other property held in connection with any such railway property, and
- (c) any rights and obligations (whether or not statutory) of Railtrack relating to any railway property.

(4) 1988 c.i.