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STATUTORY INSTRUMENTS

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**2004 No. 389**

**The Network Rail (West Coast Main Line) Order 2004**

**PART IV**

**MISCELLANEOUS AND GENERAL**

*Noise*

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

**33.**—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990<sup>(1)</sup> (summary proceedings by persons aggrieved by statutory nuisances) 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 Network Rail for the purposes of or in connection with the exercise of the powers conferred by this Order 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<sup>(2)</sup>.
- (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 Network Rail for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works.

*Miscellaneous and supplementary*

**Certain land to be treated as operational land**

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

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(1) 1990 c. 43.  
(2) 1974 c. 40.

### **Maintenance of approved works etc.**

**35.**—(1) Where pursuant to regulations<sup>(3)</sup> made under section 41 of the 1992 Act (approval of works, plant and equipment) approval has been obtained from the Health and Safety Executive with respect to any works, plant or equipment (including vehicles) forming part of the railways authorised by this Order, such works, plant and equipment shall not be used in a state or condition other than that in which they were at the time that the approval was given unless any change thereto does not materially impair the safe operation of the railways so authorised.

(2) If without reasonable cause the provisions of paragraph (1) are contravened, Network Rail shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) No proceedings shall be instituted in England and Wales in respect of an offence under this article except by or with the consent of the Health and Safety Executive or the Director of Public Prosecutions.

### **Public open space and common land**

**36.**—(1) As from the latest of—

- (a) the date on which this Order comes into force,
- (b) the date on which the special category land is vested in Network Rail, or
- (c) the date on which the exchange land is vested in Network Rail,

the exchange land shall vest in the borough of Tamworth.

(2) Upon the vesting of the exchange land in the borough of Tamworth—

- (a) the special category land shall be discharged from all rights, trusts and incidents to which it was previously subject; and
- (b) the exchange land shall be subject to the like rights, trusts and incidents as attached to the special category land.

(3) The provisions of article 28 shall apply in relation to the entering upon and taking temporary possession of the land delineated on the deposited plans and thereon numbered 97, 109b, 159b, 159c, 160, 161, 197c, 200a, 202a, 202b, 202c, 202d, 202e, 203a, 205a, 205b, 206a, 239a and 240 in the borough of Tamworth and 176a, 176c, 177, 178a, 178d, 179, 203a, 203b and 203d in the district of Lichfield as if—

- (a) the land numbered 97, 159b, 159c, 160 and 161 in the borough of Tamworth and 176a, 176c, 177, 178a, 178d, 179, 203a, 203b and 203d in the district of Lichfield were specified in columns (1) and (2) of Schedule 11 to this Order for the purpose of use as working sites and accesses in relation to Work Nos. 1 and 2;
- (b) the land numbered 109b in the borough of Tamworth were specified in columns (1) and (2) of Schedule 11 to this Order for the purpose of use as a working site and access in relation to Work Nos. 1, 2 and 4; and
- (c) the land numbered 197c, 200a, 202a, 202b, 202c, 202d, 202e, 203a, 205a, 205b, 206a, 239a and 240 in the borough of Tamworth were specified in columns (1) and (2) of Schedule 11 to this Order for the purpose of use as working sites and accesses in relation to Work No. 5.

(4) As from the later of—

- (a) the date on which this Order comes into force, or
- (b) the date on which the land delineated on the deposited plans and thereon numbered 176b, 178b, 178c and 203c in the district of Lichfield, or any part of it, is vested in Network Rail,

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(3) See S.I. 1994/157.

that land or that part of it which is vested (as the case may be) shall be discharged from all rights, trusts and incidents to which it was previously subject.

(5) As from the later of—

- (a) the date on which this Order comes into force, or
- (b) the date on which any easement or other right over the land delineated on the deposited plans and thereon numbered 176c, 178d and 203d in the district of Lichfield is vested in Network Rail,

the land over which the easement or right is acquired shall be discharged from all rights, trusts and incidents to which it was previously subject so far as their continuance would be inconsistent with the exercise of that easement or other right.

(6) In this article—

“the special category land” means the land delineated on the deposited plans and thereon numbered 98, 109a, 150, 159a, 197a, 197b and 269 in the borough of Tamworth; and

“the exchange land” means the land delineated on the deposited plans and thereon numbered 252 and 253 in the borough of Tamworth.

#### **Disclosure of confidential information**

**37.** A person who—

- (a) enters a factory, workshop or workplace in pursuance of the provisions of article 20 or 21; and
- (b) discloses to any person any information obtained by him relating to any manufacturing process or trade secret,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale unless the disclosure is made in the course of performing his duty in connection with the purposes for which he was authorised to enter the land.

#### **Saving for regulated rights etc.**

**38.** Nothing in this Order shall affect any estate, right or interest granted by Network Rail in respect of a railway facility which is subject to an access contract within the meaning of Part I of the Railways Act 1993(4).

#### **Statutory undertakers etc.**

**39.** The provisions of Schedule 12 to this Order shall have effect.

#### **Protective provisions**

**40.** The provisions of Schedule 13 to this Order shall have effect.

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

**41.** Network Rail shall, as soon as practicable after the making of this Order, submit copies of the book of reference, the deposited sections and the deposited plans to the Secretary of State for certification that they are true copies of, respectively, the book of reference, deposited sections and deposited plans referred to in this Order; and a document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

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(4) 1993 c. 43, to which there are amendments not relevant to this article.

### **Service of notices**

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

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

(3) For the purposes of section 7 of the Interpretation Act 1978<sup>(5)</sup> as it applies for the purposes of this article, the proper address of any person in relation to the service on him of a notice or document under paragraph (1) is, if he has given an address for service, that address, and otherwise—

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

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

- (a) addressing it to him by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

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

### **No double recovery**

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

### **Arbitration**

**44.** Any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after notice in writing to the other) by the President of the Institution of Civil Engineers.

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(5) 1978 c. 30.