
STATUTORY INSTRUMENTS

2005 No. 1163

The Telford Railfreight Terminal (Donnington) Order 2005

PART 4

MISCELLANEOUS AND GENERAL

Noise

Defence to proceedings in respect of statutory nuisance

20.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990⁽¹⁾ (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 the Council 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⁽²⁾.
- (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 Council for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works.

Miscellaneous

Trespass on railways, etc.

21.—(1) Any person who trespasses on the railways or on any enclosed land adjoining the railways and forming part of the undertaking shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) No person shall be convicted of an offence under this article unless it is shown that notices warning the public not to trespass upon the railways or any such land as is referred to in paragraph (1)

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

were clearly exhibited and maintained at distances of not more than one kilometre apart along the boundary fence of the railways.

Power to operate and use authorised works

22. The Council may operate and use the authorised works as a system, or part of a system, of transport for the carriage of goods.

Powers of disposal, agreements for operation, etc.

23.—(1) In this article—

“lease” includes an underlease and “lease”, where used as a verb, shall be construed accordingly;

“the transferee” means any person to whom the undertaking, or any part of it, is leased, sold or otherwise disposed of pursuant to this article; and

“the transferred undertaking” means so much of the undertaking as is leased, sold or otherwise disposed of pursuant to this article.

(2) The Council may, with the consent of the Secretary of State, sell, lease, charge or otherwise dispose of on such terms and conditions as it thinks fit, the whole or any part of the undertaking.

(a) (3) (a) Except as may be otherwise provided in this Order, the transferred undertaking shall continue to be subject to all statutory or other provisions applicable to the transferred undertaking at the date of the lease, sale or other disposal (in so far as the same are still subsisting and capable of taking effect) and the transferee shall, to the exclusion of the Council, be entitled to the benefit of, and to exercise, all rights, powers and privileges, and be subject to all obligations, statutory or otherwise relating to the transferred undertaking (in so far as the same are still subsisting and capable of taking effect) to the intent that the Council shall be released from all such obligations.

(b) This paragraph shall have effect during the term of any lease and from the operative date of any sale or other disposal under paragraph (2).

(4) Without prejudice to the generality of paragraph (2), the Council may enter into and carry into effect agreements with respect to any of the following matters, namely, the construction, maintenance, use and operation of the undertaking or of any works comprised in it, by any other person, and other matters incidental or subsidiary thereto or consequential thereon, and the defraying of, or the making of contributions towards, the cost of the matters aforesaid by the Council or any other person.

(5) Any agreement under paragraph (4) may provide for the exercise of the powers of the Council under this Order by any other person and for the transfer to any person of the undertaking or any part or parts thereof together with the rights and obligations of the Council in relation thereto.

(6) The exercise of the powers under any enactment by any person in pursuance of any sale, lease, charge or other disposal under paragraph (2) or of any agreement under paragraph (4) shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those powers were exercised by the Council.

Application of landlord and tenant law

24.—(1) This article applies to any agreement for leasing to any person the whole or any part of the authorised works or the right to operate the same, and any agreement entered into by the Council with any person for the construction, maintenance, use or operation of the authorised works, or any of those works, so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person’s use.

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

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

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

Planning permission: supplementary matters

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

(2) In relation to the application of paragraph (3)(c) of the second Schedule of the Form of Tree Preservation Order set out in the Second Schedule to the Town and Country Planning (Tree Preservation Order) Regulations 1969(3) (including that paragraph as applied by regulation 3(ii) of the Town and Country Planning (Tree Preservation Order)(Amendment) and (Trees in Conservation Areas) (Exempted Cases) Regulations 1975(4), or as incorporated in any tree preservation order), any direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to works authorised by this Order shall be treated as deeming the permission to have been granted on application made under Part III of that Act for the purposes of that Part.

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

Statutory undertakers, etc.

26. The provisions of Schedule 7 to this Order shall have effect.

For protection of specified undertakers

27. The provisions of Schedule 8 to this Order shall have effect.

For protection of Network Rail Infrastructure Limited

28. The provisions of Schedule 9 to this Order shall have effect.

For protection of Environment Agency

29. The provisions of Schedule 10 to this Order shall have effect.

(3) [S.I. 1969/17](#).

(4) [S.I. 1975/148](#).

(5) [S.I. 1999/1892](#).

Saving for Railways Act 1993

30. Nothing in this Order or in any enactment incorporated with or applied by this Order, shall prejudice or affect the operation of Part I of the Railways Act 1993⁽⁶⁾.

Certification of plans, etc.

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

Maintenance of approved works, etc.

32.—(1) Where pursuant to regulations⁽⁷⁾ 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, 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.

(2) If without reasonable cause the provisions of paragraph (1) are contravened, the Council 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.

Service of notices

33.—(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⁽⁸⁾ 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

⁽⁶⁾ 1993 c. 43.

⁽⁷⁾ See S.I. 1994/157.

⁽⁸⁾ 1978 c. 30.

- (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.

Application of existing enactments

34.—(1) In this article—

“BRB” means BRB (Residuary) Limited;

“the former railway” means so much of any railway or former railway as is situated within the Order limits but does not include any operational railway of Network Rail Infrastructure Limited;

“the relevant date” means—

- (a) in relation to so much of the former railway as is owned by the Council at the date of the coming into force of this Order, that date; and
- (b) in relation to any part of the former railway which at that date is not so owned, the earlier of the date upon which the Council acquires that part or the date upon which the Council takes entry for the purpose of constructing the authorised works.

(2) Except as may be otherwise provided in this Order, as from the relevant date the former railway or any part thereof shall continue to be subject to all statutory and other provisions applicable to it, or any part thereof, at that date (in so far as the same are still subsisting and capable of taking effect) and the Council shall, to the exclusion of BRB, be entitled to the benefit of, and to exercise, all rights, powers and privileges and be subject to all obligations statutory or otherwise relating to the former railway (in so far as the same are still subsisting and capable of taking effect), to the intent that BRB shall be released from all such obligations.

(3) Any enactment by which the former railway was authorised shall have effect subject to the provisions of this Order.

Disclosure of confidential information

35. A person who—

- (a) enters a factory, workshop or workplace in pursuance of the provisions of article 9 above; 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.

No double recovery

36. 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

37. 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.

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