
STATUTORY INSTRUMENTS

2006 No. 3117

The Network Rail (Thameslink 2000) Order 2006

PART 4

MISCELLANEOUS AND GENERAL

Noise

Defence to proceedings in respect of statutory nuisance

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

Tidal works in river Thames

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

37.—(1) A tidal work shall not be constructed, reconstructed, extended, enlarged, replaced or relaid except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by him before the work is begun.

(2) If a tidal work is constructed, reconstructed, extended, enlarged, replaced or relaid in contravention of paragraph (1) or of any condition or restriction imposed under the said paragraph—

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

- (a) the Secretary of State may by notice in writing require Network Rail at its own expense to remove the tidal work or any part thereof and restore the site thereof to its former condition; and, if on the expiration of 30 days from the date when the notice is served upon Network Rail it has failed to take reasonable steps to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice; or
- (b) if it appears to the Secretary of State urgently necessary so to do, he may remove the tidal work, or part of it, and restore the site to its former condition,

and any expenditure incurred by the Secretary of State in so doing shall be recoverable from Network Rail.

Lights on tidal works during construction

38.—(1) Network Rail shall at or near a tidal work during the whole time of the construction, reconstruction, extension, enlargement, replacement or relaying thereof, exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as the Secretary of State shall from time to time direct.

(2) If Network Rail fails to comply in any respect with any direction given under this article, it shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Provision against danger to navigation

39.—(1) In case of injury to or destruction or decay of a tidal work or any part thereof Network Rail shall as soon as reasonably practicable notify Trinity House and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House shall from time to time direct.

(2) If Network Rail fails to notify Trinity House as required by paragraph (1) or to comply with any requirement of a direction given under the said paragraph it shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Abatement of works abandoned or decayed

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

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

(3) If, on the expiration of 30 days from the date when a notice under this article is served upon Network Rail, it has failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice and any expenditure incurred by him in so doing shall be recoverable from Network Rail.

Survey of tidal works

41. If the Secretary of State deems it expedient to do so, the Secretary of State may order a survey and examination of a tidal work or of the site upon which it is proposed to construct the work, and

any expenditure incurred by the Secretary of State in any such survey and examination shall be recoverable from Network Rail.

Permanent lights on tidal works

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

(2) If Network Rail fails to comply in any respect with a direction given under paragraph (1) it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Miscellaneous

Agreement with Transport for London

43.—(1) In this article—

“affected properties” means any land which is owned by a TfL Company or in which a TfL Company has a legal estate or an interest;

“designated works” means so much of the authorised works as will be constructed under, on or over any of the affected properties; and

“TfL Company” means Transport for London or any subsidiary of Transport for London including LUL.

(2) Any works of alteration or adaptation of affected properties which may be necessary in order to construct the designated works and thereafter, the use, maintenance, operation and renewal of such property and of the designated works shall be carried out and regulated by Network Rail or a TfL Company, or by Network Rail and a TfL Company jointly, in accordance with such terms and conditions as may be agreed in writing between Network Rail and a TfL Company.

(3) An agreement made under this article may relate to the whole or part of the affected properties and may contain such incidental, consequential or supplementary provisions as may be so agreed, including (but without prejudice to the generality of the foregoing) provisions—

(a) with respect to the defraying of, or the making of contributions towards, the cost of such works of alteration or adaptation or the costs of such use, maintenance and renewal as are referred to in paragraph (2) by Network Rail or by a TfL Company or by Network Rail and a TfL Company jointly; and

(b) for the exercise by a TfL Company or by Network Rail or by a TfL Company and Network Rail jointly, of all or any of the powers and rights of a TfL Company and Network Rail (as the case may be) in respect of any part of the designated works under any enactment or contract.

(4) The exercise by Network Rail or a TfL Company or by Network Rail and a TfL Company jointly, of any powers and rights under any enactment or contract pursuant to any such agreement as is authorised by sub-paragraph (3)(b) shall be subject to all statutory and contractual provisions relating thereto as would apply if such powers and rights were exercised by Network Rail or a TfL Company alone, or by Network Rail and a TfL Company jointly, as the case may be.

(5) Network Rail and a TfL Company may enter into, and carry into effect, agreements for the transfer to and vesting in Network Rail, or a TfL Company and Network Rail jointly of—

(a) any part of the affected properties;

(b) any lands, works or other property held in connection with any part of the affected properties; and

- (c) any rights and obligations (whether or not statutory) of a TfL Company relating to any part of the affected properties.

Certain land to be treated as operational land

44. Planning permission which is deemed by a direction under section 90(2A) of the Town and Country Planning Act 1990⁽³⁾ 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).

Disclosure of confidential information

45. A person who—

- (a) enters a factory, workshop or workplace in pursuance of the provisions of article 22 (protective works to buildings) or 23 (power to survey and investigate land etc.); 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.

Statutory undertakers etc.

46. The provisions of Schedule 9 (provisions relating to statutory undertakers etc.) to this Order shall have effect.

Protective provisions

47. The provisions of Schedule 10 (protective provisions) to this Order shall have effect.

Certification of plans etc.

48. 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, respectively, of 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.

Service of notices

49.—(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⁽⁴⁾ 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—

(3) 1990 c. 8.

(4) 1978 c. 30.

- (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

50. 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

51. Any difference under any provision of this Order, unless otherwise provided for, 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.