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STATUTORY INSTRUMENTS

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**2008 No. 2512**

The Felixstowe Branch Line and  
Ipswich Yard Improvement Order 2008

PART 4

MISCELLANEOUS AND GENERAL

**Planning permission and supplementary matters**

**34.**—(1) In relation to the application of paragraph 3(c) of the Second Schedule of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Tree Preservation Order) Regulations 1969(1) (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(2), 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 3 of that Act for the purposes of that Part.

(2) 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(3) 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 works authorised by this Order shall not be treated as an outline planning permission.

(3) 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).

**Power to lop trees overhanging the authorised works**

**35.**—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised works, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised works or any apparatus used on the authorised works; or
- (b) from constituting a danger to passengers or other persons using the authorised works.

(2) In exercising the powers of paragraph (1), the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from the exercise of those powers.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.

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(1) S.I. 1969/17.  
(2) S.I. 1975/148.  
(3) S.I. 1999/1892.

### **Power to operate and use railway**

36.—(1) The undertaker may operate and use the railway as a system, or part of a system, of transport for the carriage of passengers and goods.

(2) The undertaker may permit an operator to operate and use the railway provided that any such operator is a person who has been granted a licence under section 8 of the 1993 Act or is exempted by virtue of section 7 of that Act from being so licensed.

(3) Nothing in this Order, or in any enactment incorporated with or applied by this Order, shall prejudice or affect the operation of Part 1 of the 1993 Act.

### **Power to transfer undertaking**

37.—(1) The undertaker may, with the consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) its right to construct, maintain, use or operate the authorised works (or any part of them) and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee the right to construct, maintain, use or operate the authorised works (or any part of them) and such related statutory rights as may be so agreed.

(2) Where an agreement has been made by virtue of paragraph (1) references in this Order to the undertaker shall include references to the transferee or the lessee.

(3) The exercise of the powers conferred by any enactment by any person in pursuance of any transfer or grant under paragraph (1) shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those powers were exercised by the undertaker.

### **Power to charge fares**

38.—(1) The undertaker may demand, take and recover or waive such charges for carrying passengers or goods on the railway comprised in the authorised works, or for any other services or facilities provided in connection with the operation of that railway, as it thinks fit.

(2) The undertaker may permit an operator to demand, take and recover or waive such charges for carrying passengers or goods on the railway comprised in the authorised works, or for any other services or facilities provided in connection with the operation of that railway, as it thinks fit, provided that any such operator is a person who has been granted a licence under section 8 of the 1993 Act, or is exempted by virtue of section 7 of that Act from being so licensed.

### **Agreements with Network Rail**

39.—(1) Without prejudice to article 37 (power to transfer undertaking), the undertaker and Network Rail may enter into and carry into effect agreements with respect to the construction, maintenance, use and operation of—

- (a) any of the authorised works, or any part of those works; and
- (b) any works required for the purposes of or in connection with the authorised works;

by Network Rail or by the undertaker, or by the undertaker and Network Rail jointly.

(2) Any agreement made pursuant to the powers conferred by this article 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 costs of such construction, maintenance, use and operation as are referred to in paragraph (1) by the undertaker or by Network Rail or by the undertaker and Network Rail jointly; and

(b) for the exercise by Network Rail, or by the undertaker, or by Network Rail and the undertaker jointly, of all or any of the powers and rights of Network Rail and the undertaker (as the case may be) in respect of any of the authorised works and any works required for the purposes of or in connection with such works.

(3) The exercise by the undertaker or Network Rail or the undertaker and Network Rail jointly, of any powers and rights under any enactment or contract pursuant to any such agreement as is authorised by paragraph (1) shall be subject to all statutory and contractual provisions relating thereto as would apply if such powers and rights were exercised by the undertaker or Network Rail (as the case may be) alone, and accordingly such provisions shall, with any necessary modifications, apply to the exercise of such powers and rights by the undertaker or Network Rail, or by the undertaker and Network Rail jointly, as the case may be.

(4) The undertaker and Network Rail may enter into, and carry into effect, agreements for the transfer to and vesting in Network Rail or the undertaker, or the undertaker and Network Rail jointly, of—

- (a) any of the authorised works or any part of any of those works; or
- (b) any works, lands or other property required for the purposes of the authorised works or in connection with such works,

together with any rights and obligations (whether or not statutory) of Network Rail or the undertaker relating thereto.

#### **Proceedings in respect of statutory nuisance**

**40.**—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(4) (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 undertaker for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to the construction or maintenance of the authorised works and 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(5); or
- (b) that the nuisance is a consequence of the construction, maintenance or use of the authorised works and that it cannot reasonably be avoided.

(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 undertaker for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to construction or maintenance of the authorised works.

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(4) 1990 c. 43.

(5) 1974 c. 40.

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

**41.**—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised works or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised works, or any part of them,

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 such 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.

### **Obstruction of construction of authorised works**

**42.** Any person who, without reasonable excuse—

- (a) obstructs any person acting under the authority of the undertaker in setting out the lines of the scheduled works, or in constructing any authorised work; or
- (b) interferes with, moves or removes any apparatus belonging to any person acting under the authority of the undertaker,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Trespass**

**43.**—(1) Any person who—

- (a) trespasses on any part of the railway; or
- (b) trespasses on any land of the undertaker in dangerous proximity to the railway or to any electrical or other apparatus used for or in connection with the operation of the railway,

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 a notice warning the public not to trespass on the railway was clearly exhibited and maintained at the station or level crossing on the railway nearest the place where the offence is alleged to have been committed.

(3) If the railway or any part of it is transferred to Network Rail under article 39(4) (agreements with Network Rail) this article shall cease to apply to the railway or to the part of it that has been so transferred.

(4) In this article “the railway” means the railway forming part of the authorised works.

### **Disclosure of confidential information**

44. A person who—

- (a) enters a factory, workshop or workplace in pursuance of the provisions of article 20 (protective works to buildings) or article 21 (power to survey and investigate land); 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.**

45. The provisions of Schedule 9 (provisions relating to statutory undertakers, etc.) shall have effect.

### **Protective provisions**

46. The provisions of Schedule 10 (protective provisions) shall have effect.

### **As to application of certain railway enactments**

47.—(1) Any enactment which authorised any railway or former railway of Network Rail comprised within the designated lands shall have effect subject to the provisions of this Order.

(2) Nothing in paragraph (1) shall prejudice any express statutory provision for—

- (a) the protection of the owner, lessee or occupier of any property which is specifically designated property in such provision; or
- (b) the protection or benefit of any public trustees or commissioners, corporation or other person, specifically named in such provision.

(3) In this article “designated lands” means any land which is owned by Network Rail shown on the works and land plans and described in the book of reference.

### **Application of the Land Drainage Act 1991**

48. Section 23(6) of the Land Drainage Act 1991(6) shall not apply in relation to any works authorised by this Order.

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

49. The undertaker shall, as soon as practicable after the making of this Order, submit copies of the book of reference, the sections, the works and land plans and the rights of way plans to the Secretary of State for certification that they are, respectively, true copies of the book of reference, sections, works and land plans and rights of way 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**

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

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(6) 1991 c. 59.

- (a) by post; or
  - (b) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.
- (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(7) 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) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement shall be taken to be fulfilled where the recipient of the notice or other document to be transmitted has given his consent to the use of electronic transmission either in writing or by electronic transmission.
- (6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that he requires a paper copy of all or any part of that notice or other document the sender shall provide such a copy as soon as reasonably practicable.
- (7) A person may revoke his consent to the use of electronic transmission in accordance with paragraph (8).
- (8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—
- (a) he shall give notice in writing or by electronic transmission revoking any consent given by him for that purpose; and
  - (b) such revocation shall be final and shall take effect on a date specified by the person in the notice but that date shall not be less than 7 days after the date on which the notice is given.
- (9) This article shall not be taken to exclude the employment of any method of service not expressly provided for by it.

### **No double recovery**

**51.** 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**

**52.** 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 giving notice in writing to the other) by the President of the Institution of Civil Engineers.