
STATUTORY INSTRUMENTS

2011 No. 1072

The Network Rail (Hitchin (Cambridge Junction)) Order 2011

PART 6

MISCELLANEOUS AND GENERAL

Noise

Defence to proceedings in respect of statutory nuisance

41.—(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 Network Rail for the purposes of or in connection with the exercise of 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 powers conferred by this Order with respect to works.

(3) The provisions of this article are without prejudice to the application to the authorised railway of section 122 of the Railways Act 1993⁽³⁾ (statutory authority as a defence to actions in nuisance, etc.) or any rule of common law having similar effect.

Certification of plans, etc.

42. Network Rail shall, as soon as practicable after the making of this Order, submit copies of the Order plans and the book of reference to the Secretary of State for certification that they are true copies, respectively, of the Order plans and book of reference referred to in this Order; and

(1) 1990 c. 43.

(2) 1974 c. 40.

(3) 1993 c. 43. As amended by the Transport Act 2000 (c. 38) and the Railways Act 2005 (c. 14).

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

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

- (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⁽⁴⁾ as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person 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, the last known address of that person 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 the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person 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 only where the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission 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 the recipient requires a paper copy of all or part of that notice or other document the sender shall provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person 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) that person shall give notice in writing or by electronic transmission revoking any consent given by that person 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.

(4) 1978 c. 30.

No double recovery

44. 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, or under two or more different provisions of this Order.

Arbitration

45. Except where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, 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.