
STATUTORY INSTRUMENTS

2011 No. 1072

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

PART 6

MISCELLANEOUS AND GENERAL

Planning permission: supplementary matters

36.—(1) Planning permission which is deemed by a direction under section 90(2A) of the 1990 Act to be granted in relation to the authorised works 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 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 the authorised works 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.

(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(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 the authorised works shall not be treated as an outline planning permission.

Traffic regulation

37.—(1) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, which consent shall not be unreasonably withheld, Network Rail may, at any time for the purposes of the construction of the authorised works prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles in the manner specified in Schedule 14 (traffic regulation) on those roads specified in column (1) and along the lengths and between the points specified, or to the extent otherwise described in column (2) of that Schedule.

(2) Without limiting the scope of the specific powers conferred by paragraph (1) but subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, which consent shall not be unreasonably withheld, Network Rail may, in so far as may be expedient or necessary for the purposes of or in connection with construction of the scheduled works, at any time prior to the opening of the scheduled works for use—

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

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road;
- (c) authorise the use as a parking place of any road;
- (d) make provision as to the direction or priority of vehicular traffic on any road; and
- (e) permit or prohibit vehicular access to any road,

either at all times or at times, on days or during such periods as may be specified by Network Rail.

(3) Network Rail shall not exercise the powers of paragraphs (1) and (2) unless it has—

- (a) given not less than 4 weeks' notice in writing of its intention so to do to the chief officer of police and to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may specify in writing within 7 days of its receipt of notice of Network Rail's intention in the case of sub-paragraph (a).

(4) Any prohibition, restriction or other provision made by Network Rail under paragraph (1) or (2) shall—

- (a) have effect as if duly made by, as the case may be—
 - (i) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or
 - (ii) the local authority in whose area the road is situated as an order under section 32 of the 1984 Act,

and the instrument by which it is effected may specify savings and exemptions (in addition to those mentioned in Schedule 14 (traffic regulation) to which the prohibition, restriction or other provision is subject; and

- (b) be deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004⁽⁴⁾ (road traffic contraventions subject to civil enforcement).

(5) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by Network Rail from time to time by subsequent exercise of the powers conferred by paragraph (2) at any time prior to the opening of the scheduled works for use.

(6) Before complying with the provisions of paragraph (3) Network Rail shall consult the chief officer of police and the traffic authority in whose area the road is situated.

(7) Expressions used in this article and in the 1984 Act shall have the same meaning in this article as in that Act.

Power to transfer undertaking

38.—(1) Network Rail 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 Network Rail and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between Network Rail 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 Network Rail shall include references to the transferee or the lessee.

(4) 2004 c. 18.

(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 Network Rail.

Application of landlord and tenant law

39.—(1) This article applies to—

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

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.

Disclosure of confidential information

40. A person who—

- (a) enters a manufactory, workshop or workplace in pursuance of the provisions of article 15 (power to survey and investigate land); and
- (b) discloses to any person any information obtained pursuant to paragraph (a) and 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 that person's performance of a duty in connection with the purposes for which the person was authorised to enter the land.

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⁽⁵⁾ (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—

(5) 1990 c. 43.

- (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⁽⁶⁾.
- (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⁽⁷⁾ (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 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⁽⁸⁾ 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—

⁽⁶⁾ 1974 c. 40.

⁽⁷⁾ 1993 c. 43. As amended by the Transport Act 2000 (c. 38) and the Railways Act 2005 (c. 14).

⁽⁸⁾ 1978 c. 30.

- (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.

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.