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## STATUTORY INSTRUMENTS

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# 2020 No. 511

## The West Midlands Rail Freight Interchange Order 2020

### PART 6

#### MISCELLANEOUS AND GENERAL

##### Operation and use of railways

**38.** The undertaker may operate and use the railway comprised in the authorised development and any other elements of the authorised development as a system, or part of a system, of transport for the carriage of goods.

##### Operational land for the purposes of the 1990 Act

**39.** Development consent granted by this Order within that part of the Order limits upon which the highway works are to be carried out is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as operational land for the purposes of that Act) of the 1990 Act.

##### Charges

**40.** The undertaker may demand, take or recover or waive such charges for carrying goods on the railway comprised in the authorised development, and for any other services or facilities provided in connection with the operation of that railway, as it thinks fit.

##### Felling or lopping of trees and removal of hedgerows

**41.—(1)** Subject to sub-paragraph (4) the undertaker may fell or lop any tree, shrub or hedgerow near any part of the authorised development, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree, shrub or hedgerow—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must comply with British Standard 3998:2010 “Tree Work Recommendations”, must not cause unnecessary damage to any tree, shrub or hedgerow and must pay compensation to any person for any loss or damage arising from such activity.

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

(4) The provisions of this article do not apply without the agreement of the local planning authority to any tree or hedgerow identified to be retained in the landscaping scheme approved under requirement 12 (ecological [<sup>F1</sup>mitigation and management plan]).

(5) The provisions of this article do not apply without the agreement of the relevant highway authority to any tree or hedgerow within a highway.

(6) The provisions of this article do not apply to any tree or hedgerow planted as part of an agreed landscaping or ecological mitigation plan.

#### **Textual Amendments**

- F1** Words in art. 41(4) substituted (21.10.2020) by [The West Midlands Rail Freight Interchange \(Correction\) Order 2020 \(S.I. 2020/1163\)](#), arts. 1, 2(9)

#### **Protective provisions**

42. Schedule 13 (protective provisions) to this Order has effect.

#### **Governance of requirements and governance of protective provisions relating to highway works**

43.—(1) When in any requirement or in Parts 2 and 3 of Schedule 13 (protective provisions) approval or agreement is required of, or with, anybody in relation to the content, carrying out or use of the authorised development (including for the avoidance of doubt the approval of details or plans under the requirements) such approval or agreement must not be given if it would permit development outside of the parameters of the authorised development referred to in article 4 (parameters of authorised development) or would give rise to any materially new or materially different significant effects on the environment that have not been assessed in the environmental statement or in any updated environmental information supplied under the 2017 EIA Regulations.

(2) When any details, plans or other matters have been agreed or approved by the local planning authority under a requirement, or the relevant highway authority under a requirement or Parts 2 and 3 of Schedule 13, then they may subsequently be amended by agreement with the local planning authority or relevant highway authority as the case may be provided that no amendments to those details, plans or other matters may be approved where such amendments would permit development outside of the parameters of the authorised development referred to in article 4 (parameters of authorised development) or would give rise to any materially new or materially different significant effects on the environment that have not been assessed in the environmental statement or in any updated environmental information supplied under the 2017 EIA Regulations.

(3) Where a consent, agreement or approval is required or requested by the undertaker under a requirement then the procedure set out in Part 3 of Schedule 2 (requirements) for obtaining such consent, agreement or approval, and appealing against the refusal or failure to approve or refuse such consent, agreement or approval, applies.

#### **Disapplication, application and modification of legislative provisions**

44.—(1) The following provisions do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction of the authorised development—

- (a) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (byelaw-making powers of the authority) to the Water Resources Act 1991 <sup>M1</sup>;
- (b) section 23 (prohibition of obstructions, etc. in watercourses) of the Land Drainage Act 1991 <sup>M2</sup> in relation to watercourses for which Staffordshire County Council is the drainage board concerned;

- (c) section 32 <sup>M3</sup> (variation of awards) of the Land Drainage Act 1991;
- (d) the provisions of any byelaws made under section 66 <sup>M4</sup> (powers to make byelaws) of the Land Drainage Act 1991; and
- (e) section 28E (duties in relation to sites of special scientific interest) of the Wildlife and Countryside Act 1981 <sup>M5</sup>.

(2) The provisions of the Neighbourhood Planning Act 2017 <sup>M6</sup> do not apply in so far as they relate to the temporary possession of land under articles 34 (temporary use of land for carrying out the authorised development) and 35 (temporary use of land for maintaining the authorised development) of this Order.

(3) Any development, or any part of a development within the Order limits which is constructed or used under the authority of a planning permission pursuant to Part 3 of the 1990 Act (whether express or otherwise) following the coming into force of this Order is to be disregarded at all times for the purposes of ascertaining whether or not an offence has been committed under the provisions of sections 160 (development without development consent) and 161 (breach of terms of order granting development consent) of the 2008 Act <sup>M7</sup>.

(4) Regulation 4 (requirement for consent) of the 2007 Regulations does not apply to any advertisement approved by the local planning authority under requirement 4 (detailed design approval).

(5) This Order does not constitute a planning permission for the purposes of Part 11 of the 2008 Act notwithstanding the definition of planning permission contained within article 5 (meaning of planning permission) of the 2010 Regulations.

(6) Sections 158(1) and (2) (nuisance: statutory authority) of the 2008 Act do not apply to the authorised development.

(7) Schedule 14 (miscellaneous controls) to this Order, which makes provision applying, modifying and excluding statutory provisions which relate to matters for which provision may be made by this Order, has effect.

(8) Paragraphs (1) to (7) only apply in so far as those provisions are not inconsistent with the 2017 EIA Regulations and any orders, rules or regulations made under the 2008 Act.

#### **Marginal Citations**

- M1** 1991 c. 57. Paragraph 5 was amended by section 106 of the Natural Environment and Rural Communities Act 2006, section 31 of, and paragraphs 40 and 49 of Schedule 2 to the [Flood and Water Management Act 2010 \(c. 29\)](#), and sections 84 and 146(1) of, and paragraph 3 of Schedule 11 to, the [Marine and Coastal Access Act 2009 \(c. 23\)](#). Paragraph 6 was amended by section 105 of, and paragraph 6 of Schedule 15 to, the [Environment Act 1995 \(c. 25\)](#), [sections 233\(1\), 224 and 321 of, and paragraphs 20 and 24 of Schedule 16 and Part 5\(b\) of Schedule 22 to, the Marine and Coastal Access Act 2009 \(c. 23\)](#). Paragraph 6A was inserted by section 103(3) of the [Environment Act 1995 \(c. 25\)](#).
- M2** 1991 c. 59. Section 23 was amended by section 31 of, and paragraphs 25 and 32 of Schedule 2 to, the [Flood and Water Management Act 2010 \(c. 29\)](#).
- M3** Section 32 was amended by [S.I. 2013/755](#).
- M4** Section 66 was amended by section 31 of, and paragraphs 25 and 38 of Schedule 2 to, the [Flood and Water Management Act 2010 \(c. 29\)](#) and section 86(1) and (3) of the [Water Act 2014 \(c. 21\)](#).
- M5** 1981 c. 69. Section 28E was amended by section 105(1) of, and paragraphs 79 and 80 of Part 1 of Schedule 11 to, the [Natural Environment and Rural Communities Act 2006 \(c. 16\)](#).
- M6** 2017 c. 20.

**M7** Sections 160 and 161 were amended by [S.I. 2015/664](#). Section 161 was also amended by section 112(2) of, and paragraph 4 of Part 1 of Schedule 8 to, the [Marine and Coastal Access Act 2009](#) (c. 23).

### **Certification of plans and documents**

**45.**—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of the plans and documents identified in Schedule 15 (certification of documents) for certification that they are true copies of those plans and documents.

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the plans or document of which it is a copy.

### **Service of notices**

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

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) 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 (references to service by post) of the Interpretation Act 1978<sup>M8</sup>, 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 that 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 is taken to be fulfilled only where—

- (a) 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;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

(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 must 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 must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date may not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

(10) In this article—

“electronic transmission” means a communication transmitted—

- (a) by means of electronic communications network; or
- (b) by other means but while in electronic form; and

“legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

#### **Marginal Citations**

**M8** 1978 c. 30.

#### **Arbitration**

**47.**—(1) Subject to paragraph (2) 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, must 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—

- (a) in the case of matters pertaining to land and the surveying of such land, the president of the Royal Institute of Chartered Surveyors;
- (b) in the case of matters of legal interpretation, the president of the Law Society; and
- (c) in the case of all other matters the president of the Institute of Civil Engineers.

(2) Paragraph (1) does not apply to any decisions of the Secretary of State made pursuant to the provisions of this Order.

**Changes to legislation:**

There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020, PART 6.