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STATUTORY INSTRUMENTS

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**1998 No. 3269**

**The Tyne and Wear Passenger  
Transport (Sunderland) Order 1998**

**PART II**

**WORKS PROVISIONS**

*Principal powers*

**Power to construct works**

5.—(1) The undertaker may construct and maintain the scheduled works.

(2) Subject to article 6 below, the scheduled works shall be constructed in the lines or situations shown on the deposited plans and in accordance with the levels shown on the deposited sections.

(3) The undertaker may, within the limits of deviation, or within the further limits, carry out and maintain such of the following works as may be necessary or expedient for the purposes of, in connection with or in consequence of, the construction of the scheduled works, namely—

- (a) works to alter the position of apparatus, including mains, sewers, drains and cables;
- (b) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
- (c) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised works;
- (d) works for the benefit or protection of premises affected by the authorised works;
- (e) works for the alteration or demolition of any building or structure; and
- (f) works to alter the position of any street furniture.

(4) The undertaker may, within the limits of deviation or within the further limits, carry out such other works (of whatever nature) as may be necessary or expedient for the purposes of, or in connection with or in consequence of, the construction of the scheduled works.

**Power to deviate**

6. In constructing or maintaining the authorised works, the undertaker may—

- (a) deviate laterally from the lines or situations shown on the deposited plans within the limits of deviation for that work shown on that plan, and
- (b) deviate vertically from the levels shown on the deposited sections—
  - (i) to any extent not exceeding 3 metres upwards, or
  - (ii) to any extent downwards as may be necessary or convenient.

## Stations

7. If the undertaker proceeds with the construction of the scheduled works it may—
- (a) alter the existing stations specified in Part I of Schedule 2 to this Order on the lands therein specified; and
  - (b) construct the stations specified in Part II of Schedule 2 to this Order on the lands therein specified;

and may maintain and operate the stations so altered or constructed, and may construct, maintain and operate all necessary works and conveniences connected with those stations.

## Access to works

8. The undertaker may, for the purposes of the scheduled works, form and lay out means of access or improve existing means of access in such locations within the limits of deviation or the further limits as may be approved by the highway authority, but such approval shall not be unreasonably withheld.

## Stopping up of streets and extinguishment of rights

9.—(1) Subject to the provisions of this article, the undertaker may, in connection with the construction of the authorised works, stop up each of the streets mentioned in columns (1) and (2) of Parts I and II of Schedule 3 to this Order and extinguish all rights to use vehicles (other than unpowered cycles) in the street mentioned in columns (1) and (2) of Part III of that Schedule to the extent specified, by reference to the letters and numbers shown on the deposited plans, in column (3) of Parts I, II and III of that Schedule.

(2) No street specified in columns (1) and (2) of Part I of Schedule 3 to this Order (being a street to be stopped up for which a substitute is to be provided) shall be wholly or partly stopped up under this article until the new street to be substituted for it, and which is specified in relation to it either by reference to the letters and numbers shown on the deposited plans, or by reference to one of the scheduled works, in column (4) of that Part of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use.

(3) No street specified in columns (1) and (2) of Part II of Schedule 3 to this Order (being a street to be stopped up for which no substitute is to be provided) shall be wholly or partly stopped up under this article unless all the land which abuts on it falls within one or more of the following categories, namely—

- (a) land to which there is no right of access directly from the street or part to be stopped up,
- (b) land to which there is reasonably convenient access otherwise than directly from the street or part to be stopped up,
- (c) land the owners and occupiers of which have agreed to the stopping up of the street or part, and
- (d) land which is in the possession of the undertaker.

(4) Where a street has been stopped up under this article the undertaker may, without making any payment, appropriate and use for the purposes of the Sunderland extension so much of the site of the street as is bounded on both sides by land owned by the undertaker.

(5) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part I of the Land Compensation Act 1961(1).

(6) This article is subject to paragraph 2 of Schedule 10 to this Order.

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(1) 1961 c. 33.

### **New streets to be provided**

10. The undertaker may, in connection with the construction of the authorised works, provide each of the streets mentioned in Schedule 4 to this Order.

### **Temporary stopping up of streets**

11.—(1) The undertaker may, during and for the purposes of the execution of the authorised works, temporarily stop up, alter or divert any street and may for any reasonable time—

- (a) divert the traffic from the street, and
- (b) subject to paragraph (2) below, prevent all persons from passing along the street.

(2) The undertaker shall provide reasonable access for pedestrians going to or from premises abutting on a street affected by the exercise of the powers conferred by this article if there would otherwise be no such access.

(3) Without prejudice to the generality of paragraph (1) above, the undertaker may exercise the powers of this article in relation to so much of the streets specified in Schedule 5 to this Order as lie within the limits of deviation or within the further limits.

(4) The undertaker shall not exercise the powers of this article in relation to any street without the consent of the street authority, but such consent shall not be unreasonably withheld.

### **Construction and maintenance of streets**

12.—(1) Any street to be constructed under this Order shall be completed to the reasonable satisfaction of the street authority and shall, unless otherwise agreed, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(2) Where a street is altered or diverted under this Order, the altered or diverted part of the street shall when completed to the reasonable satisfaction of the street authority, unless otherwise agreed, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(3) Paragraphs (1) and (2) above do not apply in relation to the structure of any bridge or tunnel carrying a street over or under any part of the authorised works.

(4) Nothing in this article shall prejudice the operation of section 87 of the 1991 Act (prospectively maintainable highways); and the undertaker shall not by reason of any duty under this article to maintain a street be taken to be the street authority in relation to that street for the purposes of Part III of that Act.

(5) Nothing in this article shall have effect in relation to street works as respects which the provisions of Part III of the 1991 Act apply.

### **Agreements with street authorities**

13.—(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) the construction of any new street (including any structure carrying the street over or under a railway) under the powers conferred by this Order;
- (b) the maintenance of the structure of any bridge or tunnel carrying a street over or under a railway;
- (c) any stopping up, alteration or diversion of a street under the powers conferred by this Order, or
- (d) the execution of any works to be carried out in any street.

- (2) Such an agreement may, without prejudice to the generality of paragraph (1) above—
  - (a) make provision for the street authority to carry out any function under this Order which relates to the street in question, and
  - (b) contain such terms as to payment and otherwise as the parties consider appropriate.

### **Construction of bridges and tunnels**

14. Any bridge or tunnel to be constructed under this Order for carrying a highway over or under a railway shall be constructed in accordance with plans and specifications approved by the highway authority, but such approval shall not be unreasonably withheld.

### *Supplemental powers*

### **Discharge of water**

15.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised works and for that purpose may within the limits of deviation or the further limits lay down, take up and alter pipes and may, on any land within those limits, make openings into, and connections with, the watercourse, sewer or drain.

(2) The undertaker shall not discharge any water into any watercourse, public sewer or drain except with the consent of the authority to which it belongs; and such consent may be given subject to such terms and conditions as the authority may reasonably impose but shall not be unreasonably withheld.

(3) The undertaker shall not make any opening into any public sewer or drain except in accordance with plans approved by, and under the superintendence (if provided) of, the authority to which the sewer or drain belongs, but such approval shall not be unreasonably withheld.

(4) The undertaker shall not, in the exercise of the powers conferred by this article, damage or interfere with the beds or banks of any watercourse forming part of a main river.

(5) The undertaker shall take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance or oil or matter in suspension.

(6) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991<sup>(2)</sup>.

(7) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, a local authority or a harbour authority within the meaning of the Harbours Act 1964<sup>(3)</sup>;
- (b) “watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and
- (c) other expressions used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

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(2) 1991 c. 57.

(3) 1964 c. 40.

## Level crossings at East Boldon

16.—(1) In this article—

“barrier” includes gate;

“the existing level crossing” means the existing level crossing of Station Road/Station Approach, East Boldon, in the metropolitan borough of South Tyneside;

“the highway authority” means South Tyneside Metropolitan Borough Council;

“the level crossing enactments” means the following Acts, that is—

- (a) an Act (1835) intituled “An Act for enabling John Brandling and Robert William Brandling, Esquires, to purchase and take leases of lands and hereditaments for the formation of a railway from Gateshead to South Shields and Monkwearmouth, all in the County Palatine of Durham, with branches therefrom”(4);
- (b) an Act (1836) intituled “An Act for incorporating certain persons for carrying into effect the purposes of an Act passed in the Fifth and Sixth year of the reign of his present Majesty, intituled “An Act for enabling John Brandling and Robert William Brandling, Esquires, to purchase and take leases of lands and hereditaments for the formation of a railway from Gateshead to South Shields and Monkwearmouth, all in the County Palatine of Durham, with branches therefrom”, and for other purposes”(5); and
- (c) an Act (1845) intituled “An Act for enabling the Newcastle and Darlington Junction Railway Company to purchase the Brandling Junction Railway; and to enable the said Company to make certain branch railways, stations and works, and for other purposes”(6);

“the new level crossing” means a new level crossing where Work No. 4A will cross the railway;

“protective equipment” includes lights, traffic signs (within the meaning of section 64(1) of the Road Traffic Regulation Act 1984(7)), manual, mechanical, automatic, electronic or telephonic equipment or other devices; and

“the railway” means the existing Newcastle to Hartlepool railway of Railtrack.

(2) The undertaker may construct Work No. 4A so as to carry it on the level across the railway.

(3) The highway authority and the undertaker may enter into agreements with respect to the construction and maintenance of the new level crossing; and such an agreement may contain such terms as to payment or otherwise as the parties consider appropriate.

(4) The undertaker may provide, maintain and operate at or near the new level crossing such barriers or other protective equipment as the Secretary of State may in writing approve.

(5) Any traffic sign placed pursuant to this article on or near a highway or other road to which the public has access shall be treated for the purposes of section 64(4) of the Road Traffic Regulation Act 1984 as having been placed as provided by that Act.

(6) As from the completion and opening for public use of the new level crossing all rights of way over the existing level crossing shall be extinguished (subject to paragraph 2 of Schedule 10 to this Order) and the provisions of the level crossing enactments shall cease to apply to it.

(7) Any person who suffers loss by the extinguishment of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part I of the Land Compensation Act 1961.

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(4) 5 & 6 Wm. 4 c.lxxxiii.

(5) 6 Wm. 4 c.lvii.

(6) 8 & 9 Vict. c.xcii.

(7) 1984 c. 27.

### **Safeguarding works to buildings**

17.—(1) Subject to the following provisions of this article, the undertaker may at its own expense and from time to time carry out such safeguarding works to any building situated on the relevant lands as the undertaker considers to be necessary or expedient.

(2) Safeguarding works may be carried out—

- (a) at any time before or during the construction in the vicinity of the building of any part of the authorised works; or
- (b) after the completion of the construction of that part of the authorised works, at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised works is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) above and any land belonging to it which forms part of the relevant lands.

(4) For the purpose of carrying out safeguarding works under this article to a building the undertaker may (subject to paragraphs (5) and (6) below)—

- (a) enter the building and any land belonging to it, being land forming part of the relevant lands; and
- (b) where the works cannot be carried out reasonably conveniently without entering land adjacent to the building, enter the adjacent land (but not any building erected on it), being lands forming part of the relevant lands.

(5) Before exercising—

- (a) a right under paragraph (1) above to carry out safeguarding works to a building;
- (b) a right under paragraph (3) above to enter a building;
- (c) a right under paragraph (4)(a) above to enter a building or land; or
- (d) a right under paragraph (4)(b) above to enter land,

the undertaker shall, except in case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c) above, specifying the safeguarding works proposed to be carried out.

(6) Where notice is served under paragraph (5)(a), (c) or (d) above, the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the safeguarding works or to enter the building or land to be referred to arbitration under article 49 below.

(7) The undertaker shall compensate the owners and occupiers of any building or land in relation to which the powers of this article have been exercised for any loss or damage arising to them by reason of the exercise of those powers.

(8) Where—

- (a) safeguarding works are carried out under this article to a building, and
- (b) within the period of 5 years beginning with the day on which the part of the authorised works constructed within the vicinity of the building is first opened for use it appears that the safeguarding works are inadequate to protect the building against damage caused by the construction or operation of that part of the works,

the undertaker shall compensate the owners and occupiers of the building for any damage sustained by them.

(9) Without prejudice to article 47 below, nothing in this article shall relieve the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act.

(10) Any compensation payable under paragraph (7) or (8) above shall be determined, in case of dispute, under Part I of the Land Compensation Act 1961.

(11) In this article—

- (a) “building” includes any structure or erection or any part of a building, structure or erection;
- (b) “the relevant lands” means the following lands in the city of Sunderland:—
  - (i) the lands numbered 61, 68, 71, 86 and 93 to 96 in the book of reference and on the deposited plans;
  - (ii) so much of the lands numbered 68 in the book of reference and on the deposited plans as comprises a house and outbuildings;
  - (iii) so much of the lands numbered 77 in the book of reference and on the deposited plans as comprises outbuildings; and
  - (iv) so much of the lands numbered 90 in the book of reference and on the deposited plans as comprises a public house, premises and yard.
- (c) “safeguarding works”, in relation to a building, means—
  - (i) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the construction, maintenance or operation of the authorised works; and
  - (ii) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, maintenance or operation of the authorised works.

### **Power to survey and investigate land**

18.—(1) The undertaker may for the purposes of this Order—

- (a) survey or investigate any land (including buildings) within the limits of deviation or the further limits which may be affected by the authorised works;
- (b) without prejudice to the generality of sub-paragraph (a) above, carry out archaeological investigations on the land;
- (c) without prejudice to the generality of sub-paragraph (a) above, make trial holes in such positions as the undertaker thinks fit on the land to investigate the nature of the surface layer and subsoil and remove soil samples;
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes; and
- (e) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (d) above.

(2) No land may be entered, or equipment placed or left on or removed from the land under paragraph (1) above, unless at least 7 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) shall, if so required, before or after entering the land produce written evidence of his authority to do so; and
- (b) may take with him such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) The undertaker shall make compensation for any damage occasioned, by the exercise of the powers conferred by this article, to the owners and occupiers of the land, such compensation to be determined, in case of dispute, under Part I of the Land Compensation Act 1961.

### **Attachment of equipment to listed buildings**

**19.**—(1) In this article, “the structures” means so much of the Monkwearmouth Station Museum (the Monkwearmouth Museum of Land Transport) and the Monkwearmouth railway bridge and viaduct (both of which are listed buildings within the meaning of section 1(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990<sup>(8)</sup>) as is situated within the limits of deviation, the further limits or the limits shown on the deposited plans marked “Limit of listed buildings”.

(2) Subject to paragraph (3) below and to the consent of the owner of the structures, the undertaker may affix to any part of the structures any brackets, cables, wires, insulation and other apparatus required in connection with the electrification of the existing railway from Pelaw to Sunderland for the purposes of the Sunderland extension.

(3) Nothing in this article shall avoid the need to obtain listed building consent under section 8 of the said Act of 1990 to the exercise of the powers of paragraph (2) above.

### **Agreements with Railtrack**

**20.**—(1) The undertaker and Railtrack 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 any of those works; and
- (b) any works required for the purposes thereof or in connection therewith;

by Railtrack or by the undertaker, or by the undertaker and Railtrack jointly.

(2) Any agreement made under paragraph (1) above may make provision with respect to any other matters incidental or subsidiary thereto or consequential thereon, including the defraying of, or the making of contributions towards, costs incurred by either party to the agreement.

(3) Without prejudice to the generality of paragraph (1) above, any such agreement may provide for the exercise by Railtrack or by the undertaker, or by the undertaker and Railtrack jointly, of all or any of the powers of the undertaker or Railtrack (as the case may be) with respect to any of the authorised works and any works required for the purposes thereof or in connection therewith.

(4) The exercise by Railtrack or the undertaker or by the undertaker and Railtrack jointly, under this article of any powers of the other of them with respect to the works, or any part of any of those works, or any works required for the purposes thereof or in connection therewith, shall be subject to the same provisions in relation to those powers as would apply if those powers were exercised by the undertaker or Railtrack (as the case may be) alone, and accordingly those provisions, with any necessary modifications, shall apply to the exercise of such powers by Railtrack or the undertaker, or by the undertaker and Railtrack jointly.

(5) The undertaker and Railtrack may enter into, and carry into effect, agreements for the transfer to, and vesting in Railtrack or the undertaker, or the undertaker and Railtrack 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 thereof or in connection therewith;

together with the rights and obligations of the undertaker or Railtrack (as the case may be) in relation thereto.

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(8) 1990 c. 9.