
STATUTORY INSTRUMENTS

2001 No. 2870

The Railtrack (Shortlands Junction) Order 2001

PART II

WORKS

Principal powers

Power to construct and maintain scheduled works

4.—(1) Railtrack 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.

Power to construct and maintain ancillary works

5.—(1) Railtrack may, within the limits of deviation for the scheduled works, do such of the following 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) make, provide and maintain all such approaches, bridges, ramps, means of access, shafts and stagings as Railtrack thinks fit;
- (b) construct, provide and maintain all such embankments, aprons, abutments, retaining walls, wing walls, culverts and other works as may be necessary or convenient;
- (c) alter the position of apparatus, including mains, sewers, drains and cables;
- (d) alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses; and
- (e) carry out and maintain such other works, of whatever description, as may be necessary or expedient.

(2) Railtrack may within the Order limits—

- (a) carry out and maintain landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised works; and
- (b) carry out and maintain works for the benefit or protection of land affected by the authorised works.

Power to deviate

6.—(1) In constructing or maintaining any scheduled work, Railtrack may—

- (a) subject to paragraph (2) below deviate laterally from the lines or situations shown on the deposited plans within the limits of deviation for that work so shown; and
- (b) deviate vertically from the levels shown on the deposited sections to any extent not exceeding—

- (i) in relation to Work No. 5A and Work No. 5B, one metre upwards or downwards; and
- (ii) in relation to any other work, one and a half metres upwards or downwards.

(2) The centre line of any track comprised in Work No. 3 shall not be located any closer to the houses on the southern side of the existing railway than the centre line for that work shown on the deposited plans.

Discharge of water

7.—(1) Railtrack 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 lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, sewer or drain.

(2) Railtrack 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) Railtrack 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) Railtrack shall not, in the exercise of the powers conferred by this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(5) Railtrack 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⁽¹⁾.

(7) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board, a local authority or a joint planning board;
- (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.

Safeguarding works to buildings

8.—(1) Subject to the following provisions of this article, Railtrack may at its own expense and from time to time carry out such safeguarding works to any building within the Order limits as Railtrack 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 to use.

(1) 1991 c. 57.

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

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

- (a) enter the building and any land belonging to it, 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).

(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,

Railtrack shall, except in the 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 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 31 below.

(7) Railtrack 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 or that part of the works,

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

(9) Nothing in this article shall relieve Railtrack 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 1961 Act.

(11) In this article—

- (a) “building” includes any structure or erection or any part of a building, structure or erection; and
- (b) “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

9.—(1) Railtrack may for the purposes of this Order—

- (a) survey or investigate any land within the Order limits;
- (b) without prejudice to the generality of sub-paragraph (a) above, make trial holes in such positions as it thinks fit on any such land to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a) above, carry out ecological or archaeological investigations on any such land;
- (d) place on, leave on and remove from the land apparatus for use in connection with the exercise of any of the powers conferred by sub-paragraphs (a) to (c) above; 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 Railtrack—

- (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) No trial holes shall be made under this article in a carriageway or footway without the consent of the street authority, but such consent shall not be unreasonably withheld.

(5) Railtrack 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 1961 Act.

(6) Nothing in this article shall obviate any need to obtain scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979(2).

Temporary stopping up of streets

10.—(1) Railtrack, during and for the purposes of the execution of the authorised works, may temporarily stop up, alter or divert so much of Downs Hill (“the street”) as falls within the limits of deviation for Work No. 5A and may for any reasonable time—

- (a) divert the traffic from the street, and
- (b) subject to paragraph (3) below, prevent all persons from passing along the street.

(2) Railtrack may use the street stopped up under the powers of this article as a temporary working site.

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

(4) Railtrack shall not exercise the powers of this article without first consulting the street authority.

(5) The provisions of the Street Works Act mentioned in paragraph (6) below and any regulations made, or code of practice issued or approved under, those provisions shall apply (with the necessary modifications) in relation to the stopping up, alteration or diversion of the street by Railtrack under

the powers conferred by this article where no street works are executed in the street as they would apply if the stopping up, alteration or diversion were occasioned by street works executed in the street by Railtrack.

(6) The provisions of the Street Works Act referred to in paragraph (5) above are—

- section 54 (advance notice of certain works),
- section 55 (notice of starting date of works),
- section 59 (general duty of street authority to co-ordinate works),
- section 60 (general duty of undertakers to co-operate),
- section 69 (works likely to affect other apparatus in the street),
- section 76 (liability for cost of temporary traffic regulation),
- section 77 (liability for cost of use of alternative route), and

all such other provisions as apply for the purposes of the provisions mentioned above.

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

Temporary widening of carriageways

11.—(1) Railtrack may, for the purpose of providing an improved access to the working site, temporarily increase the width of the carriageways of the relevant streets by incorporating within those carriageways so much of the footways of the relevant streets and of Bromley Road as lies within the limits marked “Limit of temporary widening of access” on the deposited plans.

(2) On giving up possession of the working site Railtrack shall restore the footways referred to in paragraph (1) above to the reasonable satisfaction of the street authority.

(3) For the duration of a period commencing with the completion of the widening of the carriageways of the relevant streets in accordance with paragraph (1) above and terminating on the restoration of the footways of those streets in accordance with paragraph (2) above, the relevant streets, as so widened, shall be maintained by and at the expense of Railtrack.

(4) In this article—

- “the relevant streets” means the streets shown numbered 19 and 20 on the deposited plans; and
- “the working site” means so much of the land shown numbered 18b on the deposited plans as is occupied under article 16 below.

Traffic restrictions

12.—(1) Subject to the provisions of this article Railtrack may during and for the purposes of the authorised works from the commencement of this Order and with the consent of the traffic authority in whose area the relevant street is situated (such consent not to be unreasonably withheld)—

- (a) prohibit or restrict the parking, stopping, waiting or the loading or unloading of vehicles, at any time, in the relevant streets;
- (b) revoke any traffic regulation order in so far as it is inconsistent with any prohibition or restriction made by Railtrack under this paragraph.

(2) Railtrack shall not exercise the powers of this article unless it has—

- (a) given not less than 2 weeks' notice in writing of its intention to do so to the chief officer of police and the traffic authority in whose area the relevant streets are situated, and
- (b) for a period of not less than 2 weeks displayed a notice of its intention to do so at, or as near as possible to, the relevant streets.

(3) Any prohibition or restriction made by Railtrack under paragraph (1) above shall have effect as if duly made by the traffic authority in whose area the relevant street is situated as a traffic regulation order under the 1984 Act.

(4) Any prohibition or restriction made by Railtrack under paragraph (1) above shall not apply to any vehicle of a statutory utility for so long as it is engaged in connection with the laying, erection, alteration, repair or inspection of any apparatus of that utility.

(5) In this article—

“the relevant streets” means the carriageway of the streets shown numbered 19 and 20 on the deposited plans as widened in accordance with article 11 above; and

“statutory utility” means a statutory undertaker for the purposes of the Highways Act 1980 or a public telecommunications operator as defined in paragraph 1(6) of Schedule 4 to this Order.