
STATUTORY INSTRUMENTS

2001 No. 2870

The Railtrack (Shortlands Junction) Order 2001

PART IV

MISCELLANEOUS AND GENERAL

Noise

Control of construction sites: appeals

21. Sections 60 (control of noise on construction sites) and 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974⁽¹⁾ shall have effect, in relation to works carried out in exercise of the powers conferred by this Order, as if in subsection (7) of each section (appeal against failure to give consent or the giving of qualified consent) for the words “a magistrates' court” there were substituted the words “the Secretary of State”.

Defence to proceedings in respect of statutory nuisance

22.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990⁽²⁾ (summary proceedings by person 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 Railtrack for the purposes of or in connection with the exercise of the 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 of the Control of Pollution Act 1974 or a consent given under section 61 or 65 of that Act.

(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 Railtrack for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works.

(1) 1974 c. 40.
(2) 1990 c. 43.

Miscellaneous

Planning permission: supplementary matters

23.—(1) Planning permission which is deemed by a direction under section 90(2A) of the Town and Country Planning Act 1990 to be granted in relation to works authorised by this Order 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 Schedule of the Form of Tree Preservation Order set out in the Second Schedule to the Town and Country Planning (Tree Preservation Order) Regulations 1969⁽³⁾ as incorporated in any tree preservation order, any direction under section 90(2A) of the Town and Country Planning Act 1990 deeming planning permission to be granted in relation to works authorised by this Order shall be treated as deeming the permission to have been granted on application made under Part III of that Act for the purposes of that Part.

Saving for regulated rights etc.

24. Nothing in this Order shall affect any estate, right or interest granted by Railtrack in respect of a railway facility which is subject to an access contract within the meaning of Part I of the Railways Act 1993⁽⁴⁾.

Statutory undertakers etc.

25. The provisions of Schedule 4 to this Order shall have effect.

Protective provisions

26. The provisions of Schedule 5 to this Order shall have effect.

Certification of plans etc.

27. Railtrack shall, as soon as practicable after the making of this Order, submit copies of the book of reference, the deposited sections and the deposited plans to the Secretary of State for certification that they are true copies, respectively, of the book of reference, deposited sections and deposited plans, 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.

Maintenance of approved works etc.

28.—(1) Where pursuant to regulations made under section 41 of the Transport and Works Act 1992 (approval of works, plant and equipment) approval has been obtained from the Health and Safety Executive with respect to any works, plant or equipment (including vehicles) forming part of the railways authorised by this Order, such works, plant and equipment shall not be used in a state or condition other than that in which they were at the time that the approval was given unless any change thereto does not materially impair the safe operation of the railways so authorised.

(2) If without reasonable cause the provisions of paragraph (1) above are contravened, Railtrack shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) S.I. 1969/17.

(4) 1993 c. 43.

(3) No proceedings shall be instituted in England and Wales in respect of an offence under this article except by or with the consent of the Health and Safety Executive or the Director of Public Prosecutions.

Service of notices

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

(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⁽⁵⁾ as it applies for the purposes of this article, the proper address of any person in relation to the service on him of a notice or document under paragraph (1) above is, if he 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, his last known address 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 his name or address cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to him 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) This article shall not be taken to exclude the employment of any method of service not expressly provided for by it.

No double recovery

30. 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.

Arbitration

31. 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.

(5) 1978 c. 30.