
STATUTORY INSTRUMENTS

2003 No. 3364

**The Alconbury Airfield (Rail Facilities and
Connection to East Coast Main Line) Order 2003**

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Alconbury Airfield (Rail Facilities and Connection to East Coast Main Line) Order 2003 and shall come into force on 12th January 2004.

Interpretation

2.—(1) In this Order—

“the 1965 Act” means the Compulsory Purchase Act 1965⁽¹⁾;

“the 1991 Act” means the New Roads and Street Works Act 1991⁽²⁾;

“the Applications Rules” means the Transport and Works (Applications and Objections Procedure) Rules 1992⁽³⁾;

“authorised railway” means any railway line or siding constructed as part of the works specified in Schedule 1 to this Order;

“authorised works” means the scheduled works and any other works authorised by this Order;

“the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

“highway” and “highway authority” have the same meaning as in the Highways Act 1980⁽⁴⁾;

“the land plan” means the plan certified by the Secretary of State as the land plan for the purpose of this Order;

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace and “maintenance” shall be construed accordingly;

“Network Rail” means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purposes of this definition “associated company” means any company which is (within the meaning of section 736 of the Companies Act 1985⁽⁵⁾) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

(1) 1965 c. 56.
(2) 1991 c. 22.
(3) S.I.1992/2902.
(4) 1980 c. 66.
(5) 1985 c. 6.

“owner”, in relation to land, means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple of land (whether in possession or reversion) and includes a person holding, or entitled to the rents and profits of, the land under a lease or tenancy having an unexpired term exceeding 3 years;

“the scheduled works” means the works specified in Schedule 1 to this Order or any part of them;

“the sections” means the sections certified by the Secretary of State as the deposited sections for the purposes of this Order;

“street” includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part III of the 1991 Act;

“the tribunal” means the Lands Tribunal;

“the undertaker” means Alconbury Developments Limited;

“the works plans” means the plans described in rule 7(1)(a) of the Applications Rules prepared in connection with the application for this Order certified by the Secretary of State as the works plans for the purpose of this Order.

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in or on land or in the air-space over its surface.

(3) Any reference in this Order to a work identified by the number of the work shall be construed as a reference to the work of that number authorised by this Order.

(4) All distances, directions and lengths stated in the description of the scheduled works or in any description of power shall be construed as if the words “or thereabouts” were inserted after each such distance, direction and length.

Incorporation of enactments relating to railways

3.—(1) The following provisions of the Railways Clauses Consolidation Act 1845(6) shall be incorporated in this Order—

section 24 (obstructing construction of railway);

(subject to paragraph (4)), section 46 (crossing of roads and construction of bridges)

section 58 (company to repair roads used by them), except for the words from “and if any question” to the end;

section 68 (accommodation works by company);

section 71 (additional accommodation works by owners), except for the words “or directed by such justices to be made by the company” and “or, in case of difference, as shall be authorised by two justices”;

sections 72 and 73 (supplementary provisions relating to accommodation works);

section 75 (omission to fasten gates);

section 77 (presumption that minerals exempted from acquisition of land);

sections 78 to 85E and Schedules 1 to 3 (minerals under railways), as respectively substituted and inserted by section 15 of the Mines (Working Facilities and Support) Act 1923;

section 105 (carriage of dangerous goods on railway);

section 145 (recovery of penalties);

(2) The following provision of the Railways Clauses Act 1863(7) shall be incorporated in this Order—

section 12 (signals, watchmen etc.).

(3) In that provision, as incorporated in this Order—

“the company” means the undertaker;

“the railway” means any railway authorised to be constructed by this Order and, except where the context otherwise requires, any other authorised works.

(4) In section 46 of the said Act of 1845, as incorporated in this Order, for the proviso there shall be substituted the words “Provided always that the plans and specification of such works are subject to the approval of the highway authority and subject to such conditions as the authority may reasonably impose”.

Incorporation of local railway enactments

4.—(1) Any enactment by which any railway or former railway of Network Rail situated within the limits of deviation was authorised shall have effect subject to the provisions of this Order.

(2) Nothing in paragraph (1) shall prejudice any express statutory provision for—

- (a) the protection of the owner, lessee or occupier of any specifically designated property,
- (b) the protection or benefit of any public trustees or commissioners, corporation or other person, specifically named in such provision, or
- (c) the protection of apparatus of water or sewerage undertakers.

PART 2

WORKS PROVISIONS

Principal powers

Power to construct and maintain works

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

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

(3) Subject to paragraph (5), the undertaker may 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 scheduled works, and
- (d) works for the benefit or protection of premises affected by the scheduled works.

(4) Subject to paragraph (5), the undertaker may carry out such other works (of whatever nature) as may be necessary or expedient for the purposes of, in connection with or in consequence of, the construction of the scheduled works.

(5) Paragraphs (3) and (4)—

- (a) shall only authorise the carrying out or maintenance of works outside the limits of deviation for the scheduled works shown on the works plans if the works are carried out on land specified in columns (1) and (2) of Schedule 2 to this Order for the purpose specified in relation to that land in column (3) of that Schedule, and
- (b) shall not authorise the carrying out or maintenance of works to alter the course of, or otherwise interfere with, navigable rivers or watercourses.

Power to deviate

6. In constructing or maintaining any of the scheduled works, the undertaker may—

- (a) deviate laterally from the lines or situations shown on the works plans within the limits of deviation for that work shown on those plans, and
- (b) deviate vertically from the levels shown on the sections—
 - (i) to any extent not exceeding 1 metre upwards in respect of the works described as Work No. 3 in Schedule 1 and 2 metres upwards in respect of the remainder of the works described in Schedule 1, or
 - (ii) to any extent downwards.

Streets

Power to execute street works

7.—(1) The undertaker may, for the purposes of the authorised works, enter upon so much of any of the streets specified in Part 1 of Schedule 3 to this Order as is within the limits of deviation for the scheduled works shown on the works plans and may—

- (a) place apparatus in the street,
- (b) maintain apparatus in the street or change its position, and
- (c) execute any works required for or incidental to any works referred to in sub-paragraphs (a) and (b) (including, in particular, breaking up or opening the street or any sewer, drain or tunnel under it, or tunnelling or boring under the street).

(2) This article is subject to paragraph 3 of Schedule 6 (provisions relating to statutory undertakers etc.) to this Order.

(3) In this article “apparatus” has the same meaning as in Part III of the 1991 Act.

Permanent and temporary stopping up and diversion of streets

8.—(1) Subject to the provisions of this article, the undertaker may, in connection with the construction of the authorised works, permanently stop up each of the streets specified in column (1) of Part 2 of Schedule 3 to this Order to the extent specified in column (2) of Part 2 of that Schedule.

(2) Subject to the provisions of this article, the undertaker may, in connection with the construction of the authorised works, temporarily stop up each of the streets specified in column (1) of Part 3 of Schedule 3 to this Order to the extent specified in column (2) of Part 3 of that Schedule.

(3) No street specified in column (1) of Parts 2 and 3 of Schedule 3 to this Order (being a street 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 column (3) of Part 2 and 3 of that Schedule has been completed to the reasonable satisfaction of the highway authority and is open for use.

- (4) Where a street has been permanently stopped up under this article—
 - (a) all rights of way over or along the street so stopped up shall be extinguished, and
 - (b) the undertaker may, without making any payment but subject to sections 77 to 85E of, and Schedules 1 to 3 to, the Railways Clauses Consolidation Act 1845⁽⁸⁾ (which relates to minerals under railways) appropriate and use for the purposes of its railway undertaking 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⁽⁹⁾.
- (6) This article is subject to paragraph 2 of Schedule 6 (provisions relating to statutory undertakers etc.) to this Order.

Access to works

9. 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 location within the limits of deviation for those works shown on the works plans as may be approved by the highway authority, but such approval shall not be unreasonably withheld.

Supplemental Powers

Discharge of water

10.—(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 lay down, take up and alter pipes and may, on any land shown on the works plans, 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⁽¹⁰⁾.

(7) In this article—

⁽⁸⁾ 1845 c. 20.
⁽⁹⁾ 1961 c. 33.
⁽¹⁰⁾ 1991 c. 57.

- (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.

Power to survey and investigate land

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

- (a) survey or investigate any land shown on the land plan or which may be affected by the authorised works,
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions as the undertaker thinks fit on the land to investigate the nature of the surface layer and subsoil samples,
- (c) 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
- (d) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (c).

(2) No land may be entered, or equipment placed or left on or removed from the land under paragraph (1), 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) 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) 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.

Power to transfer and lease rights of operation etc.

12.—(1) The undertaker 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 railway (or any part of it) and such related statutory rights as may be agreed between the undertaker and the transferee, or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee the right to construct, maintain, use or operate the authorised railway (or any part of it) and such related statutory rights as may be so agreed.

(2) Where an agreement is made by virtue of paragraph (1) references in this Order to the undertaker shall include references to the transferee or the lessee.

PART 3 ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

13.—(1) The undertaker may acquire compulsorily—

- (a) so much of the land shown on the land plan within the limits of deviation for the scheduled works shown on the works plans and described in the book of reference as may be required for the purposes of the authorised works, and
- (b) so much of the land specified in columns (1) and (2) of Schedule 2 to this Order (being land shown on the land plan and described in the book of reference) as may be required for the purpose specified in relation to that land in column (3) of that Schedule;

and may use land so acquired for those purposes or for any purpose connected with or ancillary to its railway undertaking.

(2) This article is subject to article 16(8).

Application of Part I of the Compulsory Purchase Act 1965

14.—(1) Part I of the 1965 Act, insofar as not modified by or inconsistent with the provisions of this Order, shall apply to the acquisition of land under this Order—

- (a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981⁽¹¹⁾ applies, and
- (b) as if this Order were a compulsory purchase order under that Act.

(2) Part I of the 1965 Act, as so applied, shall have effect as if—

- (a) section 4 (which provides a time limit for compulsory purchase of land) and paragraph 3(3) of Schedule 3 (which makes provision as to the giving of bonds) were omitted, and
- (b) in section 11(1) (which confers power to enter, on and to take possession of land subject to a notice to treat on giving not less than 14 days' notice) for the reference to 14 days' notice there were substituted a reference to notice of 3 months.

Powers to acquire new rights

15.—(1) The undertaker may compulsorily acquire such easements or other rights over any land referred to in article 13 as may be required for any purpose for which that land may be acquired under that provision, by creating them as well as by acquiring easements or other rights already in existence.

(2) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 4 to this Order), where the undertaker acquires a right over land under paragraph (1) the undertaker shall not be required to acquire a greater interest in it.

(3) Schedule 4 to this Order shall have effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right.

(11) 1981 c. 67.

Temporary possession of land

Temporary use of land for construction of works

16.—(1) The undertaker may, in connection with the carrying out of the authorised works—

- (a) enter upon and take temporary possession of the land specified in columns (1) and (2) of Schedule 5 to this Order for the purpose specified in relation to that land in column (3) of that Schedule relating to the authorised works specified in column(4) of that Schedule,
- (b) remove any buildings and vegetation from that land, and
- (c) construct temporary works (including the provision of means of access) and buildings on the land.

(2) Not less than 28 days before entering upon and taking temporary possession of land under this article the undertaker shall serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the work specified in relation to that land in column (4) of Schedule 5 to this Order.

(4) Before giving up possession of the land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker shall not be required to replace a building removed under this article.

(5) The undertaker shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(6) Any dispute as to a person’s entitlement to compensation under paragraph (5), or as to the amount of the compensation, shall be determined under Part I of the Land Compensation Act 1961.

(7) Without prejudice to article 28, nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5).

(8) The powers of compulsory acquisition of land conferred by this Order shall not apply in relation to the land referred to in paragraph (1) except that the undertaker shall not be precluded from acquiring new rights over any part of that land under article 15.

(9) Where the undertaker takes possession of land under this article, it shall not be required to acquire the land or any interest in it.

(10) In this article and in article 17 “building” includes structure or any other erection.

Temporary use of land for maintenance of works

17.—(1) At any time during the maintenance period relating to any of the scheduled works, the undertaker may—

- (a) enter upon and take temporary possession of any land shown on the land plan for the purpose of, or in connection with, maintaining the work or any ancillary works connected with it,
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) shall not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house, or

(b) any building (other than a house) if it is not for the time being occupied.

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article the undertaker shall serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance works for which possession of the land was taken.

(5) Before giving up possession of the land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker shall pay compensation to the owners and occupiers of the land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(7) Any disputes as to a person's entitlement to compensation under paragraph (6), or as to the amount of compensation, shall be determined under Part I of the Land Compensation Act 1961.

(8) Without prejudice to article 28, nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act, or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, it shall not be required to acquire the land or any interest in it.

(10) In this article "the maintenance period", in relation to a scheduled work, means the period of 5 years beginning with the date on which the scheduled works are opened for use.

Compensation

Disregard of certain interests and improvements

18.—(1) In assessing the compensation (if any) payable to any person on the acquisition from him of any land under this Order, the tribunal shall not take into account—

(a) any interest in land, or

(b) any enhancement of the value of any interest in land by reason of any building erected, works executed or improvement or alteration made on relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the execution of the works or the making of the improvement or alteration was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(2) In paragraph (1) "relevant land" means the land acquired from the person concerned or any other land with which he is, or was at the time when the building was erected, the works executed or the improvements or alterations made, directly or indirectly concerned.

Supplementary

Acquisition of part of certain properties

19.—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 14) in any case where—

(a) a notice to treat is served on a person ("the owner") under the 1965 Act (as so applied) in respect of land forming only part of a house, building or factory or of land consisting of a house with a park or garden ("the land subject to the notice to treat"), and

(b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within a period of 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat and stating that he is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner shall be required to sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner shall be required to sell only the land subject to the notice to treat shall, unless the undertaker agrees to take the land subject to the counter-notice, be referred to the tribunal.

(5) If on such a reference the tribunal determine that the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice, or
- (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner shall be required to sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determine that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice, or
- (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat shall be deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determine that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice, but
- (b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker agrees to take the land subject to the counter-notice, or if the tribunal determine that—

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house, and
- (b) the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.

(9) In any case where by virtue of a determination by the tribunal under this article a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and if it does so shall pay to the owner compensation for any

loss or expense occasioned to him by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or factory or of land consisting of a house with a park or garden, the undertaker shall pay him compensation for any loss sustained by him due to the severance of that part in addition to the value of the interest acquired.

Extinction or suspension of private rights of way

20.—(1) All private rights of way over land subject to compulsory acquisition under this Order shall be extinguished—

(a) as from the acquisition of the land by the undertaker, whether compulsorily or by agreement, or

(b) on the entry on the land by the undertaker under section 11(1) of the 1965 Act,

whichever is sooner.

(2) All private rights of way over land of which the undertaker takes temporary possession under this Order shall be suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(3) 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.

(4) This article does not apply in relation to any right of way to which section 271 or 272 of the Town and Country Planning Act 1990⁽¹²⁾ (extinguishment of rights of statutory undertakers etc.) applies.

Time limit for exercise of powers of acquisition

21.—(1) The powers conferred by this Order to acquire land or rights over land compulsorily, and the power conferred by article 16 to enter upon and take temporary possession of land, shall cease at the end of the period of 5 years beginning on the day on which this Order comes into force.

(2) Paragraph (1) shall not prevent the undertaker remaining in possession of land in accordance with article 16 after the end of that period, if the land was entered, and possession of it was taken, before the end of that period.

PART 4

MISCELLANEOUS AND GENERAL

Power to operate and use railways

22. The undertaker may operate and use the railways and other authorised works as a system, or part of a system, of transport for the carriage of goods.

Maintenance of approved works etc.

23.—(1) Where, pursuant to regulations⁽¹³⁾ made under section 41 of the Act (approval of works, plant and equipment), approval has been obtained from the Health and Safety Executive with respect

⁽¹²⁾ 1990 c. 8.

⁽¹³⁾ S.I. 1994/157.

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) are contravened, the undertaker shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(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.

Disclosure of confidential information

24. A person who—

- (a) enters a factory, workshop or workplace in pursuance of the provisions of article 11, and
- (b) discloses to any person any information obtained by him 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 performing his duty in connection with the purpose for which he was authorised to enter the land.

Statutory undertakers etc.

25. The provisions of Schedule 6 to this Order shall have effect.

Certification of plans etc.

26. The undertaker shall, as soon as practicable after the making of this Order, submit copies of the book of reference, the land plan, the sections and the works plans to the Secretary of State for certification that they are true copies of, respectively, the book of reference, sections and 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.

Service of notices

27.—(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(14) 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) 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.

(14) 1978 c. 30.

(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

28. 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

29. 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.

Trespass on railway

30.—(1) Any person who—

- (a) trespasses on any authorised railway, or
- (b) trespasses upon any land of the undertaker in dangerous proximity to the authorised railway or to any electrical or other apparatus used for or in connection with the operation of the authorised railway,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) No person shall be convicted of an offence under this article unless it is shown that notices warning the public not to trespass upon the railway were clearly exhibited and maintained at the boundary fence of the railway in the location where any streets cross the authorised railway.

Agreements with Network Rail

31.—(1) The undertaker and Network Rail may enter into and carry into effect agreements with respect to the construction, maintenance, renewal, use and operation of—

- (a) any of the authorised works, or any part of those works, and
- (b) any works required for the purposes thereof or in connection therewith, including any works to alter or adapt any property of Network Rail or to connect with any railway operated by Network Rail

by Network Rail or by the undertaker, or by the undertaker and Network Rail jointly.

(2) Any agreement made under paragraph (1) 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 of such works or the maintenance and renewal thereof incurred by either party to the agreement.

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

(4) The exercise by Network Rail or the undertaker or by the undertaker and Network Rail jointly, of any powers and rights under any enactment or contract pursuant to any such agreement as is authorised in paragraph (1) shall be subject to the same provisions relating thereto as would apply if such powers and rights were exercised by the undertaker or Network Rail (as the case may be) alone, and accordingly, those provisions, with any necessary modification, shall apply to the exercise of such powers and rights by Network Rail or the undertaker, or by the undertaker and Network Rail jointly, as the case may be.

(5) In constructing the scheduled works the undertaker may with the agreement of Network Rail, which agreement shall not be unreasonably withheld but may be given subject to reasonable conditions, re-align so much of any of Network Rail's railways as lie within the limits of deviation of the scheduled works and may connect to Network Rail's railway in such locations within the limits of deviation for those works as shall be agreed between the undertaker and Network Rail.

(6) The undertaker and Network Rail may enter into, and carry into effect, agreements for the transfer to, and vesting in Network Rail or the undertaker, or the undertaker and Network Rail jointly, of—

- (a) any of the authorised works or any part of any of those works,
- (b) any works, lands or other property required or held for the purposes thereof or in connection therewith

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

(7) Nothing in this Order, or in any enactment incorporated with or applied by this Order, shall prejudice or affect the operation of the provisions of Part 1 of the Railways Act 1993(15) in relation to anything done under or in pursuance of this Order.

For the protection of Network Rail

32. The provisions of Schedule 7 to this Order shall have effect.

For the protection of the Environment Agency

33. The provisions of Schedule 8 to this Order shall have effect.

Signed by authority of the Secretary of State for Transport

Ellis Harvey
Head of the Transport and Works Act Orders
Unit,
Department for Transport

22nd December 2003