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## STATUTORY INSTRUMENTS

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### 2003 No. 3364

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

#### 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<sup>(1)</sup> (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<sup>(2)</sup>.

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

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(1) 1845 c. 20.

(2) 1961 c. 33.

## 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(3).

(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.

### 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,

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(3) 1991 c. 57.

- (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.