
STATUTORY INSTRUMENTS

2012 No. 2679

**The Chiltern Railways (Bicester to
Oxford Improvements) Order 2012**

PART 4

MISCELLANEOUS AND GENERAL

Traffic regulation

37.—(1) Subject to the provisions of this article the Company may, for the purposes and during the construction of the authorised works 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) suspend temporarily the use of any parking place within a relevant street; and
- (c) suspend or revoke any traffic regulation order in so far as it is inconsistent with any prohibition or restriction made by the Company under this paragraph.

(2) The Company must consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (3).

(3) The Company must not exercise the powers of this article unless it has—

- (a) given not less than 6 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) not less than 7 days before exercising any power under this article, given notice of the intention to exercise the power of this article by publishing a notice in a local newspaper circulating in the area.

(4) Any prohibition, restriction or other provision made by the Company under paragraph (1) has effect as if duly made by the traffic authority in whose area the street is situated as a traffic regulation order under the Road Traffic Regulation Act 1984⁽¹⁾ and the instrument by which it is effected may specify savings to which the prohibition, restriction or other provision is subject.

(5) Any prohibition or restriction made by the Company under paragraph (1) does 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.

(6) In this article—

“the relevant streets” means the carriageway of the streets specified in columns (1) and (2) of Schedule 12 (traffic regulation); and

(1) 1984 c. 27.

“statutory utility” means a statutory undertaker for the purposes of the Highways Act 1980(2) or a public communications provider as defined in section 151(1) of the Communications Act 2003(3).

Defence to proceedings in respect of statutory nuisance

38.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(4) (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 is to 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 the Company for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to authorised works and that the nuisance is attributable to the carrying out of authorised works which are being carried out in accordance with a notice served under section 60, or a consent given under section 61 or 65, of the Control of Pollution Act 1974(5); or
- (b) that the nuisance is a consequence of the operation of the authorised works and that it cannot reasonably be avoided.

(2) The following provisions of the Control of Pollution Act 1974—

- (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),

do not apply where the consent relates to the use of premises by the Company for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works.

(3) The provisions of this article are without prejudice to the application to the authorised works of section 122 of the Railways Act 1993(6) (statutory authority as a defence to actions in nuisance, etc.) or any rule of common law having similar effect.

Planning permission

39. Planning permission which is deemed by a direction under section 90(2A) of the 1990 Act to be granted in relation to the authorised works (or any of them) is to 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).

Power to lop trees overhanging the authorised works

40.—(1) The Company may fell or lop any tree or shrub near any part of the authorised works, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised works or any apparatus used on the authorised works; or
- (b) from constituting a danger to passengers or other persons using the authorised works.

(2) 1980 c. 66.

(3) 2003 c. 21.

(4) 1990 c. 43.

(5) 1974 c. 40.

(6) 1993 c. 43. As amended by the Transport Act 2000 (c. 38) and the Railways Act 2005 (c. 14).

(2) In exercising the powers conferred by paragraph (1), the Company must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from the exercise of those powers.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

Open Space at Tubbs Lane

41.—(1) As from the date on which the Company enters onto the Tubbs Lane open space under section 11(1) of the 1965 Act or section 8 of the Compulsory Purchase (Vesting Declarations) Act 1981(7) the Tubbs Lane open space land is discharged from all rights, trusts and incidents to which it was previously subject.

(2) In this article “the Tubbs Lane open space” means the land numbered 03023 in the district of Cherwell on the deposited plans and forming part of an open space within the meaning of section 19(1) of the Acquisition of Land Act 1981(8) which the Secretary of State has certified as not exceeding 209 square metres and that the giving in exchange of other land for the Tubbs Lane open space is unnecessary for the purposes of section 19(1) of that Act.

Power to operate and use railway

42.—(1) The Company may operate and use the railway and other authorised works as a system, or part of a system, of transport for the carriage of passengers and goods.

(2) Nothing in this Order, or in any enactment incorporated with or applied by this Order, affects the operation of Part 1 of the Railways Act 1993.

Power to transfer undertaking

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

(2) Where an agreement has been made by virtue of paragraph (1) references in this Order to the Company include references to the transferee or the lessee.

(3) The exercise of the powers conferred by any enactment by any person in pursuance of any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those powers were exercised by the Company.

Agreements with Network Rail

44.—(1) Without prejudice to article 43 (power to transfer undertaking), the Company and Network Rail 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 those works; and
- (b) any works required for the purposes of or in connection with the authorised works,

(7) 1981 c. 66.

(8) 1981 c. 67.

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

(2) Any agreement made pursuant to the powers conferred by this article may contain such incidental, consequential or supplementary provisions as may be agreed, including (but without limitation on the scope of paragraph (1)), provisions—

- (a) with respect to the defraying of, or the making of contributions towards, the cost of such construction, maintenance, use and operation as are referred to in paragraph (1) by the Company or by Network Rail or by the Company and Network Rail jointly;
- (b) for the exercise by Network Rail, or by the Company, or by Network Rail and the Company jointly, of all or any of the powers and rights of Network Rail and the Company (as the case may be) in respect of any of the authorised works and any works required for the purposes of, or in connection with, those works; and
- (c) without limitation on the scope of sub-paragraph (b), for the exercise by Network Rail, or by Network Rail and the Company jointly, of all or any of the powers under this Order for, or relating to, the compulsory acquisition or the taking of temporary possession of any land or rights over land.

(3) The exercise by the Company or Network Rail or by the Company and Network Rail jointly, of any powers and rights under any enactment or contract pursuant to any such agreement as is authorised by paragraph (1) is subject to all statutory and contractual provisions relating to it as would apply if such powers and rights were exercised by the Company or Network Rail (as the case may be) alone, and accordingly such provisions, with any necessary modifications, apply to the exercise of such powers and rights by the Company or Network Rail or by the Company and Network Rail jointly, as the case may be.

(4) The Company and Network Rail may enter into, and carry into effect, agreements for the transfer to and vesting in Network Rail or the Company, or the Company and Network Rail 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 of the authorised works or in connection with such works,

together with any rights and obligations (whether or not statutory) of Network Rail or the Company relating to them.

Application of landlord and tenant law

45.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised works or the right to operate the same; and
- (b) any agreement entered into by the Company with any person for the construction, maintenance, use or operation of the authorised works, or any part of them,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) No such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;

- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Obstruction of construction of authorised works

46. Any person who, without reasonable excuse—

- (a) obstructs any person acting under the authority of the Company in setting out the lines of the scheduled works or in constructing any authorised work; or
- (b) interferes with, moves or removes any apparatus belonging to any person acting under the authority of the Company,

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

Trespass

47.—(1) Any person who—

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

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

(2) No person is to be convicted of an offence under this article unless it is shown that a notice warning the public not to trespass on the railway was clearly exhibited and maintained at the station on the railway nearest the place where the offence is alleged to have been committed.

(3) If the railway or any part of it is transferred to Network Rail under article 44(1) (agreements with Network Rail), this article ceases to apply to the railway or to the part of it that has been so transferred.

(4) In this article “the railway” means the railway forming part of the authorised works.

Disclosure of confidential information

48. A person who—

- (a) enters a factory, workshop or workplace in pursuance of the provisions of article 20 (protective works to buildings, roads or apparatus of a statutory undertaker) or article 21 (power to survey and investigate land); and
- (b) discloses to any person any information obtained pursuant to sub-paragraph (a) and relating to any manufacturing process or trade secret,

is 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 that person’s performance of a duty in connection with the purposes for which the person was authorised to enter the land.

Statutory undertakers etc.

49. The provisions of Schedule 13 (provisions relating to statutory undertakers etc.) have effect.

For the protection of specified undertakers

50. The provisions of Schedule 14 (for the protection of specified undertakers) have effect.

For the protection of the Environment Agency

51. The provisions of Schedule 15 (for the protection of the Environment Agency) have effect.

For the protection of Network Rail

52. The provisions of Schedule 16 (for the protection of Network Rail) have effect.

For the protection of the Canal & River Trust

53. The provisions of Schedule 17 (for the protection of the Canal & River Trust) have effect.

Certification of plans etc.

54. The Company must, as soon as practicable after the making of this Order, submit copies of the book of reference, the deposited plans and the deposited sections to the Secretary of State for certification that they are, respectively, true copies of the book of reference, the deposited plans and the deposited sections referred to in this Order; and a document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

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

- (a) by post; or
- (b) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

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

- (a) addressing it to that person 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.

(9) 1978 c. 30.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is taken to be fulfilled where the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission either in writing or by electronic transmission.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

(a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and

(b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

No double recovery

56. Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law.

Arbitration

57. Any difference under any provision of this Order, unless otherwise provided for, must 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 giving notice in writing to the other) by the President of the Institution of Civil Engineers.