
STATUTORY INSTRUMENTS

2018 No. 693

**The High Speed Rail (London – West Midlands)
(Greatmoor Railway Sidings Etc.) Order 2018**

PART 4

MISCELLANEOUS AND GENERAL

Planning permission

16. Planning permission which is deemed by a direction under section 90(2A)(1) (development with government authorisation) of the 1990 Act to be granted in relation to authorised works is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as operational land of the purposes of that Act) of that Act.

Power to transfer undertaking

17.—(1) The Nominated 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 works (or any part of them) and such related statutory rights as may be agreed between the Nominated Undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed for a period agreed between the Nominated Undertaker 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 agreed.

(2) Any agreement made under the powers conferred by paragraph (1) may contain such incidental, consequential or supplementary provisions, including provisions relating to the defraying of, or the making of contributions towards the costs of such construction, maintenance, use and operation by the Nominated Undertaker or by any other person.

(3) Where an agreement has been made by virtue of paragraph (1) references in this Order to the Nominated Undertaker include, where appropriate, references to the transferee or lessee.

(4) 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 Nominated Undertaker.

Application of landlord and tenant law

18.—(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 those works; and

(1) Section 90(2A) was inserted by section 16(1) of the Transport and Works Act 1992 (c. 42).

- (b) any agreement entered into by the Nominated Undertaker with any person for the construction, maintenance, use or operation of the authorised works or any part of those works,

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

(2) No enactment or rule of law regulating the rights or 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 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 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 the obligation of any party under the lease.

Application of the principal Act to authorised works

19.—(1) Schedule 7 (application of provisions of the principal Act) has effect.

(2) So far as consistent with the provisions of this Order and the 1992 Act⁽²⁾ and so far as any person exercising the powers conferred by this Order is a nominated undertaker for the purposes of any provision of the principal Act, this Order and the principal Act are to be construed as one.

Modification of provisions in an agreement relating to the protection of Network Rail Infrastructure Limited

20.—(1) The Nominated Undertaker is bound by the obligations of the Secretary of State for Transport under the relevant agreement as if it had been a party to that agreement.

(2) The modifications specified in paragraph (3) have effect with respect to the relevant agreement.

(3) The modifications referred to in paragraph (2) are—

- (a) references to “High Speed 2 Works” in the relevant agreement include the authorised works; and
- (b) reference in clause 2 of the relevant agreement to the use of powers in the principal Act which would authorise those matters set out in paragraphs (a) to (f) of that clause include reference to the powers conferred by Part 3 of this Order which would authorise such matters.

(4) The Nominated Undertaker is the Alternative Nominated Undertaker for the purposes of clause 17.1 of the relevant agreement and will perform the obligations of the relevant agreement insofar as they relate to the authorised works.

(5) In this article “the relevant agreement” means the agreement dated 28th February 2014 between the Secretary of State for Transport and Network Rail Infrastructure Limited relating to protective provisions in respect of the High Speed 2 Project.

(2) 1992 c. 42.

Obstruction of construction of authorised works

21. Any person who, without reasonable excuse—

- (a) obstructs any person acting under the authority of the Nominated Undertaker 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 Nominated Undertaker,

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

Trespass

22.—(1) Any person who—

- (a) trespasses on any part of the railway; or
- (b) trespasses on any land occupied by the Nominated Undertaker 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) In this article “the railway” means the railway forming part of the authorised works.

Disclosure of confidential information

23. A person who—

- (a) enters a factory, workshop or workplace under the provisions of paragraphs 1, 2, 3, 4, 5 and 6 of Part 2 of Schedule 2 to the principal Act as applied to this Order pursuant to article 19 (application of the principal Act to authorised works); and
- (b) discloses to any person any information obtained as a result of that entry 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.

Certification of plans etc.

24. The Nominated Undertaker must, as soon as practicable after the making of this Order, submit copies of the book of reference, the deposited plans and the sections to the Secretary of State for certification that they are, respectively, true copies of the book of reference the deposited plans and the 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

25.—(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 (references to service by post) of the Interpretation Act 1978⁽³⁾ 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, that person's 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 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.
- (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 transmission 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.

Repeals of the principal Act

26.—(1) The following provisions of the principal Act are omitted—

- (a) subsections (5) to (11) of section 22; and
 - (b) Works Nos. 2/76B, 2/76C (and the sub-heading above it) and 2/78 in Schedule 1.
- (2) In Work No. 2/80, for “, 2/79 and 2/78” substitute “and 2/79”.

(3) 1978 c. 30.

No double recovery

27. 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.