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SCOTTISH STATUTORY INSTRUMENTS

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**2010 No. 188**

**The Network Rail (Waverley Steps) Order 2010**

**PART 4**

**MISCELLANEOUS AND GENERAL**

**Provision as to Work No. 2**

**38.**—(1) Network Rail, the roads authority and the owner may from time to time enter into one or more agreements under this article in relation to Work No. 2.

(2) An agreement under this article may make provision to secure that the roads authority does not incur additional expense by reason of the vesting of Work No. 2 effected by article 9(3), and including in particular provision for—

- (a) the owner to be responsible for carrying out the maintenance of Work No. 2;
- (b) the lighting of Work No. 2 by the owners;
- (c) the protection of Princes Mall;
- (d) the provision and maintenance of support for Work No. 2;
- (e) entitling the roads authority to enter on Princes Mall and carry out any works necessary by reason of the failure of any person to perform any obligation which that person is liable to perform by virtue of an agreement under this article or of paragraph (3);
- (f) the closure of Work No. 2 in connection with works to Princes Mall, the provision of a temporary alternative and the inclusion in any redevelopment of Princes Mall of a permanent alternative walking route that fulfils the requirements of paragraph (3);
- (g) the reimbursement by Network Rail of reasonable expenses reasonably incurred by the roads authority or any owner in connection with the discharge of specified functions under the agreement;
- (h) the making of payments by the roads authority; and
- (i) any incidental and consequential matters.

(3) The alternative walking route shall be a pedestrian walkway between Princes Street and Work No. 3 which—

- (a) is not significantly longer than Work No. 2;
- (b) may pass within any redeveloped building;
- (c) if not all on the same level as Princes Street, provides a means of traversing its entire length without using stairs, steps or escalators;
- (d) satisfies all relevant accessibility requirements imposed under the Disability Discrimination Act 1995(1) or the Disability Discrimination Act 2005(2) so as to make

the alternative walking route accessible for use by disabled persons within the meaning of those Acts; and

- (e) is available for use by the public without charge at such times as Network Rail and the owner may agree at the time of the redevelopment having regard to the times when Waverley station is open to the public, the use of the redeveloped building and its hours of regular use and the cost of making the alternative walking route available outside those hours.

(4) For the purposes of the 2003 Act any burden or obligation contained in an agreement under this article shall be a real burden and—

- (a) the agreement shall be the constitutive deed by which it is created;
- (b) any such burden on Network Rail shall be treated as a burden on Network Rail’s Waverley Station;
- (c) any such burden on an owner shall be treated as a burden on Princes Mall; and
- (d) any such burden shall be treated as benefiting Work No. 2 and shall be enforceable by the roads authority.

(5) An agreement made under this article shall have effect by virtue of this article and without the consent or approval of any third party from whom an owner would otherwise be obliged to seek such consent or approval.

(6) Part 4 of the 1991 Act shall not apply to Work No. 2.

(7) Any dispute arising between Network Rail and an owner in respect of an agreement under this article shall be determined by arbitration.

(8) In this article—

“the owner” means any person who is from time to time the owner or head tenant of Princes Mall, and if there is more than one such person means all of them jointly and severally; and

“redevelopment” , in relation to Princes Mall, means the reconstruction or replacement of Princes Mall such that Work No. 2 is removed or reconstructed.