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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**

**Enforcement and registration of rights and obligations**

**31.**—(1) Notwithstanding any enactment or rule of law, a servitude or other right acquired by Network Rail under article 15 or 16 or an obligation imposed under article 17 shall be enforceable—

- (a) in the case of permanent rights over plot no. 3 acquired for the purpose of Work No. 2, by the roads authority; and
- (b) in any other case, by Network Rail.

(2) A servitude, right, or obligation of the sort mentioned in paragraph (1) shall, unless otherwise expressly stated in the instrument by which it is created, be treated for all purposes as benefiting—

- (a) in the case of paragraph (1)(a), the road comprised in Work No. 2; and
- (b) in the case of paragraph (1)(b), the land from time to time held by Network Rail for the purpose of the authorised works.

(3) Notwithstanding sections 4(5) and 75 of the 2003 Act (which requires a real burden and a positive servitude to be registered against both the benefited property and the burdened property), where a servitude, right or obligation falls to be treated as mentioned in paragraph (2), the deed by which it is created shall be effective whether or not it is registered against the benefited property.

**Real burdens and servitudes, etc. affecting land acquired**

**32.** Any land acquired under or by virtue of this Order shall be treated as if it were acquired by virtue of a compulsory purchase order and the provisions of section 106 of the 2003 Act<sup>(1)</sup> (extinction of real burdens and servitudes affecting land that has been compulsorily acquired) shall apply to it.

**Disapplication of existing height restrictions**

**33.** Any provision in any enactment other than this Order or in any deed, writing or other instrument, or any rule of law, which has the effect of limiting the height of any building or other structure within the Order limits shall not apply to the authorised works.

**Planning permission: operational land**

**34.** The land used by Network Rail for the purposes of Works Nos. 1 and 3 in accordance with any planning permission or deemed planning permission relating to those works or the works ancillary to them shall be deemed to be operational land within the meaning and for the purposes of the 1997 Act.

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(1) Section 106 was amended by [S.S.I. 2003/503](#).

### **Status of Work No. 1**

**35.** In consequence of the land held for the purposes of Work No. 1 forming part of Network Rail's operational land in accordance with article 34, that land shall not be, nor be capable of becoming, subject to any right established by prescription.

### **Statutory undertakers, etc.**

**36.** The provisions of Schedule 7 (statutory undertakers) shall have effect.

### **Protective provisions**

**37.** Schedule 8 (which contains protective provisions for the benefit of specified gas, electricity, water and sewerage undertakers and the owners of land adjoining the authorised works) shall have effect.

### **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(2) or the Disability Discrimination Act 2005(3) so as to make

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(2) 1995 c.50.

(3) 2005 c.13.

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.

### **Certification of plans, etc.**

**39.** Network Rail having, as soon as practicable after the Scottish Ministers determined to make this Order, submitted copies of the book of reference, the Order plans and the Order sections to the Scottish Ministers for certification that they are, respectively, the book of reference, Order plans and Order sections referred to in this Order; a document so certified, or a document certified by the Scottish Ministers as being a copy of a document so certified, is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

### **Dispute resolution**

**40.—**(1) Where under this Order any dispute (other than a dispute to which the provisions of the Lands Clauses Acts apply) is to be determined by arbitration (in default of other agreed dispute resolution procedure), the dispute shall be referred to, and settled by, a single arbiter 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 for the time being of the Institution of Civil Engineers.

(2) An arbiter appointed under this article shall be entitled to state a case for the opinion of the Court of Session pursuant to section 3 of the Administration of Justice (Scotland) Act 1972(4).

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(4) 1972 c.59, section 3 was amended by the Trade Union and Labour Relations (Consolidation) Act 1992 (c.52), Schedule 1.

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*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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(3) Section 108 of the Housing Grants, Construction and Regeneration Act 1996<sup>(5)</sup> (right to refer disputes to adjudication) shall not apply to any dispute in respect of a provision of this Order (whether or not it is a dispute of the sort described in subsection (1)).

**Rights of the Crown**

**41.** Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown.

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<sup>(5)</sup> 1996 c.53.