
STATUTORY INSTRUMENTS

1997 No. 1266

The Greater Manchester (Light Rapid Transit System) (Airport Extension) Order 1997

PART V

PROTECTIVE PROVISIONS

For protection of British Railways Board

37.—(1) For the protection of the railways board the following provisions shall, unless otherwise agreed in writing between the undertaker and the railways board, have effect.

(2) In this article—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the architect” means an architect to be appointed by the railways board;

“plans” includes sections, designs, drawings, specifications, soil reports, calculations and descriptions (including descriptions of methods of construction) staging proposals and programmes;

“railway property” means any property, works or apparatus held or used by the railways board in connection with the operation of railway or station services;

“the railway station” means the railway station operated by the railways board at Manchester Airport; and

“specified works” means so much of the authorised works as may be situated upon, across, under or over or within 15 metres of, or may in any way affect, railway property within Manchester Airport (including any of the authorised works adjoining the railway station).

(3) The undertaker shall not under the powers of this Order acquire compulsorily any railway property but it may, with the consent of the railways board, which consent shall not be unreasonably withheld but may be given subject to reasonable conditions, acquire such easements or other rights over any railway property referred to in paragraph (1)(a) or (b) of article 24 above as it may reasonably require for any purpose for which that railway property might have been acquired under that provision.

(4) The undertaker shall not exercise the powers of article 21 above or the powers of section 11(3) of the 1965 Act in respect of any railway property except with the consent of the railways board which consent shall not be unreasonably withheld but may be given subject to reasonable conditions.

(a) (5) (a) Except with the consent of the railways board the undertaker shall not in the exercise of the powers of this Order prevent pedestrian or vehicular access to any operational station of the railways board or any other railway property.

(b) The consent of the railways board under this paragraph shall not be unreasonably withheld but may be given subject to reasonable conditions.

- (a) (6) (a) The undertaker shall before commencing the construction of the specified works supply to the railways board proper and sufficient plans (including particulars as to the timing of the works) for the reasonable approval of the architect and shall not commence the specified works until plans thereof have been approved in writing by the architect or settled by arbitration.
- (b) The approval of the architect under this paragraph shall not be unreasonably withheld or delayed and if within 56 days after such plans have been supplied to the railways board the architect has not intimated his disapproval thereof and the grounds of his disapproval he shall be deemed to have approved the same.
- (a) (7) (a) The railways board may require such modifications to be made in the said plans as may reasonably be required in the interests of the safe and efficient management and operation of the station (including requirements for passenger interchange with other modes of transport in the forecourt and requirements relating to access to, and servicing facilities for, the station) and of railway services.
- (b) In the event that any modifications required by the railways board conflict with a requirement of Railtrack's engineer under paragraph (8) of article 38 below, the requirement of Railtrack's engineer shall prevail.
- (8) The undertaker shall give to the railways board not less than 56 days' notice in writing of its intention to commence the construction of any of the specified works.
- (9) The specified works shall, when commenced, be constructed—
 - (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled as aforesaid,
 - (b) in such manner as to cause as little damage to railway property as may be, and
 - (c) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe operation of the railway and station services of the railways board.
- (10) The undertaker shall—
 - (a) at all times afford reasonable facilities to the architect for access to the specified works during their construction, and
 - (b) supply the architect with all such information as he may reasonably require with regard to the specified works or the method of construction thereof.
 - (a) (11) (a) If any alterations or additions, either permanent or temporary, to railway property in which the railways board have an interest are reasonably necessary during the construction of the specified works or during a period of 12 months after the completion thereof in consequence of the construction of the specified works and the railways board gives to the undertaker reasonable notice of its intention specifying the alterations or additions to be effected, such alterations and additions may be effected by the railways board and the undertaker shall pay to the railways board the reasonable cost thereof including, in respect of permanent alterations and additions, a capitalised sum representing the increase in the costs which may be expected to be reasonably incurred by the railways board in maintaining, working and, when necessary, renewing any such alterations or additions.
 - (b) The architect shall, in respect of the capitalised sums referred to in this paragraph and paragraph (13)(a) below, provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.
 - (c) If the cost to the railways board of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving shall be set off against any sum payable by the undertaker to the railways board under this paragraph.

(12) If at any time after the completion of the specified works, not being works vested in the railways board, the railways board give notice to the undertaker informing it that the state of maintenance of the specified works appears to be such as adversely affects the operation of railway property in which the railways board have an interest, the undertaker shall, on receipt of such notice, take such steps as may be reasonably necessary to put the specified works in such state of maintenance as not adversely to affect such railway property.

(a) (13) (a) The undertaker shall be responsible for and make good to the railways board all losses (including revenue losses), and reasonable costs, charges, damages and expenses not otherwise provided for in this article (and which would not otherwise be recoverable from a third party) which may be occasioned to or reasonably incurred by the railways board—

(i) by reason of the construction or maintenance of the specified works or the failure thereof, of

(ii) by reason of any act or omission of the undertaker or of any persons in their employ or of their contractors or others whilst engaged upon the specified works;

(including costs incurred in approving plans or in employing additional staff and additional costs incurred in maintaining or altering railway property) and the undertaker shall effectively indemnify and hold harmless the railways board from and against all claims and demands arising out of or in connection with the specified works or any such failure, act or omission as aforesaid and the fact that any act or thing may have been done by the railways board on behalf of the undertaker or in accordance with plans approved by the architect or in accordance with any requirement of the architect or under his supervision shall not (if it was done without negligence on the part of the railways board or of any person in their employ or of their contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph.

(b) The railways board shall give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the undertaker.

(c) In this paragraph references to specified works include reference to specified works as defined in article 38 below.

(14) In the assessment of compensation payable under this article there shall not be taken into account any enhancement of that compensation attributable to any action taken by or any agreement entered into by the railways board if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining compensation or increased compensation and for the avoidance of doubt any reference in this paragraph to compensation shall be deemed to relate to any payment due to the railways board under this article.

(15) Unless otherwise agreed in writing between the undertaker and the railways board all the rights and obligations of the railways board, whether statutory or otherwise, relating to any land of the railways board which is transferred to the undertaker under the powers or in consequence of this Order shall be transferred to the undertaker to the exclusion of the railways board on the date upon which the undertaker enters upon that land.