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STATUTORY INSTRUMENTS

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**1998 No. 3269**

**The Tyne and Wear Passenger  
Transport (Sunderland) Order 1998**

**PART IV**

**MISCELLANEOUS AND GENERAL**

**Power to operate and use railways**

**36.** The undertaker may operate and use the Sunderland extension as a system, or part of a system, of transport for the carriage of passengers and goods.

**Provisions as to use of electrical energy**

**37.—**(1) The following provisions of this article shall apply to the use of electrical energy for the purposes of the railways comprised in the authorised works.

(2) The undertaker shall employ either insulated returns or uninsulated metallic returns of low resistance.

(3) The undertaker shall take all reasonable precautions in constructing, placing and maintaining its electric lines and circuits and other works and also in working the railways comprised in the authorised works so as to—

- (a) minimise the discharge of electrical currents into the ground; and
- (b) avoid injuriously affecting by fusion or electrolytic action any electric lines or any gas or water pipes, or other metallic pipes, structures or substances, or injuriously interfering with, or with the working of, any wire, line or apparatus used for the purpose of transmitting electrical energy or of telecommunications, or the currents in any such wire, line or apparatus.

(4) The undertaker shall be deemed to take all reasonable and proper precautions against interference with, or with the working of, any wire, line or apparatus if and so long as it uses—

- (a) at the option of the undertaker, insulated returns or uninsulated metallic returns of low resistance, and
- (b) such other means of preventing injurious interference with, and with the working of, the electric wires, lines and apparatus, as may be specified by the Secretary of State (and in specifying such means the Secretary of State shall have regard to the expense involved in relation to the protection afforded).

(5) The provisions of this article shall not give any right of action in respect of injurious interference with, or with the working of, any electric wire, line or apparatus, or the currents therein, unless, in the construction, erection, maintaining and working of such wire, line and apparatus, all reasonable and proper precautions, including the use of an insulated return, have been taken to minimise injurious interference therewith, and with the currents therein, by or from other electric currents.

(6) In this article, reference to an insulated return includes reference to a return by means of a combined neutral and earth cable which is covered by an insulated sheath suitable for protection against corrosion.

### **Application of existing enactments**

**38.**—(1) Any enactment by which any part of any railway or former railway situated within the limits of deviation or the further limits was authorised shall have effect subject to the provisions of this Order.

(2) The relevant enactments shall apply to the Sunderland extension and to railway premises, including stations, station approaches, escalators and moving pavements, comprised in or provided in connection with the Sunderland extension, and to trains or Metro vehicles of the undertaker on the Sunderland extension, as they apply to the rapid transit railway or Metro authorised by the Tyneside Metropolitan Railway Act 1973<sup>(1)</sup> and to railway premises, including stations, station approaches, escalators and moving pavements, comprised in or provided in connection with the rapid transit railway, and to trains or Metro vehicles on the rapid transit railway.

(3) In paragraph (2) above and paragraph (6) below “the relevant enactments” are—

Tyneside Metropolitan Railway Act 1973—

section 58 (Byelaws relating to rapid transit railway);

Tyne and Wear Passenger Transport Act 1979<sup>(2)</sup>—

section 5 (Avoidance of fares);

Byelaws relating to Metro and bus premises made by the Tyne and Wear Passenger Transport Executive on 4th July 1980.

(4) In its application to the Sunderland extension section 5 of the Tyne and Wear Passenger Transport Act 1979 shall have effect as though for the reference in subsection (3) to a fine not exceeding £200 and for the reference in subsection (4) to a fine of £500 there were substituted references to a fine on level 3 of the standard scale.

(5) In the event of conflict, in relation to a station of which the undertaker is not the operator, between—

(a) a byelaw applied, or made under a power applied, by paragraph (2) above; and

(b) any other byelaw made or enforceable by the operator of the station;

that other byelaw shall prevail.

(6) In relation to the existing railway between Newcastle and Hartlepool the relevant enactments shall apply only to trains or Metro vehicles of the undertaker and to stations served by such trains or vehicles.

(7) For the purpose of paragraph (5) above, “operator” has the meaning given by section 6(2) of the 1993 Act.

### **Consultative committees**

**39.**—(1) In this article “the committees” means the Rail Users' Consultative Committee for the time being established under section 2(2) of the 1993 Act for the area where the Sunderland extension is situated and the Central Rail Users' Consultative Committee established by section 3(2) of that Act.

(2) As from the commencement of the undertaker’s passenger services on the Sunderland extension, the committees shall have the same respective functions in relation to the services and

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(1) 1973 c.i.

(2) 1979 c.xxxii.

facilities provided by the undertaker on the Sunderland extension as they have under any enactment in relation to the undertaking authorised by the Tyneside Metropolitan Railway Act 1973 and the Tyne and Wear Passenger Transport Act 1989.

#### **Power for undertaker to contract for police**

**40.**—(1) The undertaker may from time to time make agreements with the chief officer of police and a police authority for the employment by the undertaker of any members of the police establishment of that police authority for police duty within railway premises or elsewhere upon the Sunderland extension.

(2) Any such agreement may contain such terms and conditions and provide for such payment or consideration as the undertaker shall agree with the police authority.

(3) In this article “police authority” includes—

- (a) a police authority within the meaning of the Police Act 1964(3); and
- (b) the British Railways Board.

#### **Power to transfer, lease etc. undertaking**

**41.**—(1) In this article, unless the context otherwise requires—

“functions” includes powers, duties and obligations;

“transferee” means a person to whom all or any of the property or functions of the undertaker have been transferred by virtue of a transfer agreement; and

“transfer agreement” means an agreement entered into under paragraphs (2) or (3) below.

(2) The undertaker may enter into and carry into effect an agreement to sell, lease, charge or otherwise dispose of, on such terms and conditions as it thinks fit, the whole or any part of the undertaking consisting of the Sunderland extension and any land held by the undertaker for the purpose of, or in connection with, the Sunderland extension.

(3) Without prejudice to the generality of paragraph (2) above, the undertaker may enter into and carry into effect an agreement with any other person with respect to the transfer to and vesting in that other person of all or any of its functions under this Order.

(4) A transfer agreement may be entered into so as to transfer and vest such property and functions in any other person for such period as may be specified in that agreement or for so long as the agreement remains in force and where such an agreement is entered into references in this Order to the undertaker shall, to the extent that the agreement so provides, have effect as references to the transferee.

(5) Without prejudice to the powers of the undertaker to terminate or vary a transfer agreement, a transfer agreement may specify circumstances in which that agreement shall cease to have effect before the expiry of any period specified in any such agreement.

(6) A transfer agreement may include such supplementary, incidental, transitional and consequential provisions as the undertaker may consider to be necessary or expedient.

(7) Upon expiry of any period specified in a transfer agreement in accordance with paragraph (4) above, or upon a transfer agreement being terminated or otherwise ceasing to have effect, the functions and property of the undertaker which were transferred by that agreement shall, by virtue of this paragraph but subject to the effect of any further transfer agreement entered into by the undertaker, be re-vested in the undertaker, but such re-vesting shall not make the undertaker subject to any of the liabilities of the transferee other than any continuing duties imposed by this Order.

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(3) 1964 c. 68.

(8) Notwithstanding anything in any transfer agreement, any duty arising under this Order to complete the construction of, or to maintain or operate any works in respect of which the undertaker's functions are transferred by a transfer agreement, together with such rights and property as are required for the discharge of that duty, shall revert to the undertaker in the event of the abandonment of those works or in the event that the works are not completed within 10 years of the commencement of construction of those works.

(9) Unless the transfer agreement otherwise provides, if a duty to complete the construction of, to maintain or to operate any works reverts to the undertaker under paragraph (8) above, the transfer agreement shall terminate and all the functions and property of the undertaker which were transferred by that agreement shall be re-vested in the undertaker in accordance with paragraph (7) above.

(10) Within 21 days of the completion of any transfer agreement the undertaker shall serve notice on the Secretary of State stating the name and address of the transferee and the date when the transfer is to take effect.

(11) Within 21 days of the re-vesting in the undertaker of any property or functions pursuant to paragraph (7) or (9) above or the reversion to the undertaker of any duty, rights or property pursuant to paragraph (8) above, the undertaker shall serve notice on the Secretary of State, providing him with particulars of the re-vesting or reversion concerned.

(12) If the undertaker fails to comply with the obligations imposed by paragraph (10) or (11) above it shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(13) A transfer agreement may confer on the transferee the power of the undertaker to enter into a transfer agreement under this article in respect of any functions or property transferred to the transferee, and the provisions of this article, with the exception of paragraphs (8) and (9) above and paragraph (14) below, shall apply in relation to the exercise of such power by such transferee as if references to the undertaker were references to the transferee.

(14) The inclusion in any transfer agreement of the power to enter into a transfer agreement or anything done in pursuance of such a power shall not affect the reversion to the undertaker in the circumstances referred to in paragraphs (8) and (9) above of any functions or property of the undertaker.

### **Maintenance of approved works etc.**

**42.**—(1) Where pursuant to the Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994<sup>(4)</sup> approval has been obtained from the Health and Safety Executive with respect to any works, plant or equipment (including vehicles) forming part of the railways authorised by this Order, such works, plant and equipment shall not be used in a state or condition other than that in which they were at the time that the approval was given unless any change thereto does not materially impair the safe operation of the railways so authorised.

(2) If without reasonable cause the provisions of paragraph (1) above are contravened, the undertaker shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) No proceedings shall be instituted in England and Wales in respect of an offence under this article except by or with the consent of the Health and Safety Executive or the Director of Public Prosecutions.

### **Disclosure of confidential information**

**43.** A person who—

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(4) [S.I. 1994/157](#).

- (a) enters a factory, workshop or workplace in pursuance of the provisions of article 17 or article 18 above; and
- (b) discloses to any person any information obtained by him relating to any manufacturing process or trade secret;

shall be 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 performing his duty in connection with the purposes for which he was authorised to enter the land.

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

44. The provisions of Schedule 10 to this Order shall have effect.

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

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

#### **Service of notices**

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

(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<sup>(5)</sup> as it applies for the purposes of this article, the proper address of any person in relation to the service on him of a notice or document under paragraph (1) above is, if he 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, his 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 his name or address cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to him 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) This article shall not be taken to exclude the employment of any method of service not expressly provided for by it.

#### **No double recovery**

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

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(5) 1978 c. 30.

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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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### **Withholding of consent**

48. Where it is provided in this Order that any consent or approval is not to be unreasonably withheld, any dispute as to whether it is so unreasonably withheld or as to any conditions subject to which it is given shall be determined by arbitration.

### **Arbitration**

49. Any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) shall 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 notice in writing to the other) by the President of the Institution of Civil Engineers.