
STATUTORY INSTRUMENTS

2002 No. 1064

The Heathrow Express Railway Extension Order 2002

PART IV

MISCELLANEOUS AND GENERAL

Power to transfer, lease etc. undertaking

25.—(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 paragraph (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 authorised works and any land held for the purpose of, or in connection with, those works.

(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 (except in the definition of “the participants” in paragraph 1(2) of Schedule 4 thereto) 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.

(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 revested 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 revesting in the undertaker of any property or functions pursuant to paragraph (10) or (11) 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 revesting or reversion concerned.

(12) If the undertaker fails, without reasonable excuse, to comply with the obligation imposed by paragraph (10) or (11) above it shall be guilty of an offence and 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 accordingly, the provisions of this article shall in their application to the exercise of such power by such transferee have effect as if any reference to the undertaker in those provisions (except paragraphs (8) and (9) above and paragraph (14) below) were a reference 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.