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STATUTORY INSTRUMENTS

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**2013 No. 1967**

**The Croxley Rail Link Order 2013**

**PART 4**

**MISCELLANEOUS AND GENERAL**

**Defence to proceedings in respect of statutory nuisance**

**31.**—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990<sup>(1)</sup> (summary proceedings by person aggrieved by statutory nuisances) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order is to be made, and no fine is to be imposed, under section 82(2) of that Act if the defendant shows—

- (a) that the nuisance relates to premises used by the Council for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to authorised works and that the nuisance is attributable to the carrying out of authorised works which are being carried out in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974<sup>(2)</sup>; or
- (b) that the nuisance is a consequence of the operation of the authorised works and that it cannot reasonably be avoided.

(2) The following provisions of the Control of Pollution Act 1974—

- (a) section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990); and
- (b) section 65(8) (corresponding provision in relation to consent for registered noise level to be exceeded),

do not apply where the consent relates to the use of premises by the Council for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works.

(3) The provisions of this article do not affect the application to the authorised works of section 122 of the Railways Act 1993<sup>(3)</sup> (statutory authority as a defence to actions in nuisance, etc.) or any rule of common law having similar effect.

**Planning permission**

**32.** Planning permission which is deemed by a direction under section 90(2A) of the 1990 Act to be granted in relation to the authorised works is to be treated as specific planning permission for

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(1) 1990 c. 43.

(2) 1974 c. 40.

(3) 1993 c. 43. As amended by the Transport Act 2000 (c. 38) and the Railways Act 2005 (c. 14).

the purposes of section 264(3)(a) of that Act (cases in which land is to be treated as operational land for the purposes of that Act).

#### **Power to lop trees overhanging the authorised works**

**33.**—(1) The Council may fell or lop any tree or shrub near any part of the authorised works, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised works or any apparatus used on the authorised works; or
- (b) from constituting a danger to passengers or other persons using the authorised works.

(2) In exercising the powers conferred by paragraph (1), the Council must not cause unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from the exercise of those powers.

(3) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

#### **Power to transfer undertaking**

**34.**—(1) The Council may transfer to either LUL or Network Rail (“the transferee”)—

- (a) the authorised works, or any part of them; or
- (b) its right to construct, maintain, use or operate the authorised works (or any part of them) or to acquire or use land for the purpose of the authorised works and such related statutory rights as may be agreed between the Council and the transferee,

on such terms as may be agreed between the Council and the transferee.

(2) Where an agreement has been made by virtue of paragraph (1)(b) references in this Order to the Council include references to the transferee.

(3) The exercise of the powers conferred by any enactment by any person in pursuance of any transfer under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those powers were exercised by the Council.

#### **Power to operate and use railway**

**35.**—(1) The Council may operate and use the authorised works as a system, or part of a system, of transport for the carriage of passengers and goods.

(2) Nothing in this Order, or in any enactment incorporated with or applied by this Order, affects the operation of Part 1 of the Railways Act 1993.

#### **Transfer of former Croxley Green Branch line**

**36.**—(1) The Council and Network Rail and LUL may, subject in the case of Network Rail to compliance with the terms of its network licence, any relevant operational procedures and obligations under statute, carry into effect agreements entered into for the transfer to the Council or LUL or in part to the Council and in part to LUL of—

- (a) all or part of the former Croxley Green Branch line; and
- (b) rights and obligations (whether or not statutory) of Network Rail relating to the former Croxley Green Branch line,

and for the transfer back to Network Rail in such circumstances as may be specified in the agreement, of all or part of the former Croxley Green Branch line and any such rights and obligations.

(2) The Council and LUL may carry into effect agreements entered into for the transfer to LUL of any lands works or property and any rights and obligations transferred to the Council in accordance with paragraph (1).

(3) The Council or LUL may use so much of the former Croxley Green Branch line as is within the Order limits in connection with the construction, maintenance and operation of the authorised works, and the 1907 Act, so far as not repealed by paragraph (4), has effect subject to the provisions of this Order.

(4) Subject to paragraphs (5) and (6), on the date of the transfer to the Council or LUL of all or part of the former Croxley Green Branch line under the powers conferred by this Order so much of the 1907 Act is repealed as relates to that part of the former Croxley Green Branch line which lies outside the limits of deviation for Work No. 1.

(5) Nothing in paragraphs (3) and (4) affects any provision in the 1907 Act which expressly provides for—

- (a) the protection of the owner, lessee or occupier of any properties specifically identified in the provision; or
- (b) the protection or benefit of any public trustees or commissioners, corporation or other person specifically named in such provision.

(6) The repeal of the provisions of the 1907 Act mentioned in paragraph (4) do not affect the continued operation and effect of any deed, or of any other agreement or instrument (whether or not executed under seal), relating to any land, works or property referred to or affected by those provisions and in existence before the repeal takes effect.

(7) In this article—

“the former Croxley Green Branch line” means the land belonging to Network Rail within the land shown numbered 41, 41a, 42, 44, 44a, 44b, 53, 54, 59, 64, 66, 69, 78, 79, 80, 86, 87, 89, 93 and 94 and the land hatched black on the deposited plans including any works, apparatus and equipment belonging to Network Rail within that land and any easement of other property interest or right held or used by Network Rail in connection with such land, works, apparatus or equipment; and

“the 1907 Act” means the London and North Western Railway Act 1907(4).

### **Obstruction of construction of authorised works**

**37.** Any person who, without reasonable excuse—

- (a) obstructs any person acting under the authority of the Council in setting out the lines of the scheduled works or in constructing any authorised work; or
- (b) interferes with, moves or removes any apparatus belonging to any person acting under the authority of the Council,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Trespass**

**38.—**(1) A person who—

- (a) trespasses on any part of the railway; or
- (b) trespasses on any land of the Council in dangerous proximity to the railway or to any electrical or other apparatus used for or in connection with the operation of the railway,

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(4) 1907 c. clxxxvii.

is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) No person is to be convicted of an offence under this article unless it is shown that a notice warning the public not to trespass on the railway was clearly exhibited and maintained at the station on the railway nearest the place where the offence is alleged to have been committed.

(3) If the railway or any part of it is transferred to Network Rail or LUL under article 34 (power to transfer undertaking) this article ceases to apply to the railway or to the part of it that has been so transferred.

(4) In this article “the railway” means the railway forming part of the authorised works.

### **Disclosure of confidential information**

**39.** A person who—

- (a) enters a factory, workshop or workplace in pursuance of the provisions of article 14 (power to survey and investigate land); and
- (b) discloses to any person any information obtained pursuant to sub-paragraph (a) and relating to any manufacturing process or trade secret,

is 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 that person’s performance of a duty in connection with the purposes for which the person was authorised to enter the land.

### **Water abstraction**

**40.**—(1) The restriction imposed by section 24(1) of the Water Resources Act 1991<sup>(5)</sup> (restriction on abstraction of water) does not apply in relation to the abstraction of water for the purposes of, or in connection with, the construction of the authorised works.

(2) Section 48A(1) of the Water Resources Act 1991 (duty not to cause loss or damage to another by the abstraction of water) does not apply in relation to the abstraction of water in connection with the exercise of the powers conferred by this Order.

(3) Where—

- (a) the Council causes loss or damage to another person by the abstraction of water in connection with the exercise of the powers conferred by this Order; and
- (b) the circumstances are such that causing the loss or damage would have constituted breach of the duty under section 48A(1) of the Water Resources Act 1991, but for paragraph (2),

it must compensate the other person for the loss or damage.

(4) Compensation under paragraph (3) is to be assessed on the same basis as damages for breach of the duty under section 48A(1) of the Water Resources Act 1991.

(5) Section 48A(5) of the Water Resources Act 1991 (prohibition of claims in respect of loss or damage caused by abstraction of water which are not claims under that section) has no application to claims under this article or under Part 6 of Schedule 9 (protection for the Environment Agency).

(6) In this article, “abstraction” has the same meaning as in the Water Resources Act 1991.

### **Statutory undertakers etc.**

**41.** The provisions of Schedule 8 (provisions relating to statutory undertakers etc.) have effect.

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(5) 1991 c. 57.

### **Protection of interests**

42. The provisions of Schedule 9 (protective provisions) have effect.

### **Disposal of land to LUL**

43. Section 123(2) of the Local Government Act 1972<sup>(6)</sup> (which requires the consent of the Secretary of State for certain disposals of land by a principal council) does not apply to the disposal of land to LUL authorised by this Order.

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

44. The Council must, 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, respectively, true copies of the book of reference, deposited sections and deposited plans referred to in this Order; and a document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

### **Service of notices**

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

- (a) by post; or
- (b) with the consent of the recipient and subject to paragraphs (6) to (8) by electronic transmission.

(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>(7)</sup> as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person 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, the last known address of that person 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 the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person 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) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is taken to be fulfilled where the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission either in writing or by electronic transmission.

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<sup>(6)</sup> 1972 c. 70.

<sup>(7)</sup> 1978 c. 30.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

(a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and

(b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

#### **No double recovery**

**46.** Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law.

#### **Arbitration**

**47.** Any difference under any provision of this Order, unless otherwise provided for, must 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 giving notice in writing to the other) by the President of the Institution of Civil Engineers.