
STATUTORY INSTRUMENTS

2015 No. 781

The Crossrail (Plumstead Sidings) Order 2015

PART 4

MISCELLANEOUS AND GENERAL

Defence to proceedings in respect of statutory nuisance

17.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisances) of the Environmental Protection Act 1990⁽¹⁾ in relation to a nuisance falling within paragraph (g) of section 79(1)⁽²⁾ (noise emitted from premises so as to be prejudicial to health or a nuisance) of that Act 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 promoter 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⁽³⁾; 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 promoter 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⁽⁴⁾ (statutory authority as a defence to actions in nuisance, etc.) or any rule of common law having similar effect.

(1) 1990 c. 43. Section 82 was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c. 40) and paragraph 6 of Schedule 17 to the Environment Act 1995 (c. 25).

(2) Section 79(1) was amended by section 2(2) of the Noise and Statutory Nuisance Act 1993, section 120 of, and paragraph 2(a) of Schedule 17 and paragraph 89(2) of Schedule 22 to, the Environment Act 1995, sections 101(2) and 102(2) of the Clean Neighbourhoods and Environment Act 2005 (c. 16) and sections 109(2), 110(2), 111(2) and 112(2)(a) of the Public Health etc. (Scotland) Act 2008 (asp. 5).

(3) 1974 c. 40. Section 61 was amended by Schedule 7 to the Building Act 1984 (c. 55), paragraph 15(3) of Schedule 15 to the Environmental Protection Act 1990 (c. 43), Schedule 24 to the Environment Act 1995 and paragraph 10 of Schedule 6 to the Building (Scotland) Act 2003 (asp. 8). Section 65 was amended by paragraph 15(4) of Schedule 15 to the Environmental Protection Act 1990 and Schedule 24 to the Environment Act 1995.

(4) 1993 c. 43. Section 122 was amended by the Transport Act 2000 (c. 38) and the Railways Act 2005 (c.14).

Application of the principal Act to authorised works

18.—(1) Schedule 4 (application of provisions of the principal Act) has effect.

(2) So far as consistent with the provisions of this Order and the Transport and Works Act 1992⁽⁵⁾, and so far as any person exercising the powers conferred by this Order is a nominated undertaker for the purposes of any provision of the principal Act, this Order and the principal Act are to be construed as one.

(3) Without limitation on the scope of paragraph (2), in determining any application or request by the promoter to any body for an approval or consent under the provisions of the principal Act (including those provisions as applied by this Order), that body must have regard (so far as is relevant) to the combined effect of the works authorised by this Order and the works authorised by the principal Act for the purposes of the construction of which the promoter is the nominated undertaker.

Modification of provisions in an agreement relating to the protection of Network Rail

19.—(1) The promoter is bound by the obligations of the Secretary of State for Transport under the relevant agreement as if it had been a party to that agreement.

(2) The modifications specified in paragraph (3) have effect with respect to the relevant agreement.

(3) The modifications referred to in paragraph (2) are—

- (a) references to “Crossrail Works” in the relevant agreement include the authorised works;
- (b) references to “the powers in sections 5 to 9 of the Act” in the relevant agreement include references to the powers conferred by Part 3 of this Order.

(4) In this article “the relevant agreement” means the agreement dated 9th October 2006 between the Secretary of State for Transport and Network Rail relating to protective provisions in respect of the Crossrail Project.

Compliance with Crossrail Environmental Minimum Requirements

20.—(1) Any provisions of any development agreement requiring compliance with Crossrail Environmental Minimum Requirements apply to the promoter as if the authorised works were included in the works authorised by the principal Act.

(2) In this article—

- (a) “development agreement” means an agreement to which the Secretary of State for Transport and the promoter are a party and under which the promoter has responsibilities in relation to the design, construction, financing or maintenance of Crossrail; and
- (b) “Crossrail Environmental Minimum Requirements” means the undertakings and assurances given to Parliament and petitioners by the Secretary of State for Transport during the passage of the principal Act through Parliament, specified in the Crossrail Register of Undertakings and Assurances published by the Department for Transport⁽⁶⁾ together with the Crossrail Planning and Heritage Memorandum, Construction Code and Environmental Memorandum.

⁽⁵⁾ 1992 c. 42.

⁽⁶⁾ The Register of Undertakings and Assurances is available at <http://www.crossrail.co.uk/about-us/crossrail-act-2008/register-of-undertakings-and-assurances>.

Power to lop trees overhanging the authorised works

21.—(1) The promoter 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 promoter 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

22.—(1) The promoter may, with the consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) its right to construct, maintain, use or operate the authorised works (or any part of them) and such related statutory rights as may be agreed between the promoter and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the promoter and the lessee the right to construct, maintain, use or operate the authorised works (or any part of them) and such related statutory rights as may be so agreed.

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

(3) The exercise of the powers conferred by any enactment by any person in pursuance of any transfer or grant 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 promoter.

Obstruction of construction of authorised works

23. Any person who, without reasonable excuse—

- (a) obstructs any person acting under the authority of the promoter 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 promoter,

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

Disclosure of confidential information

24. A person who—

- (a) enters a factory, workshop or workplace in pursuance of the provisions of article 7 (power to survey and investigate land); and
- (b) discloses to any person any information obtained as a result of that entry 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.

Certification of plans etc.

25. The promoter must, as soon as practicable after the making of this Order, submit copies of the book of reference, the works and land plans and the sections to the Secretary of State for certification that they are, respectively, true copies of the book of reference, the works and land plans and the sections 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

26.—(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 (5) 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 (references to service by post) of the Interpretation Act 1978(7) 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.

(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

27. 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

28. 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.