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STATUTORY INSTRUMENTS

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**2020 No. 114**

**The Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020**

**PART 4**

**MISCELLANEOUS AND GENERAL**

**Power to transfer undertaking**

**34.**—(1) Network Rail may—

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

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to Network Rail, except in paragraph (1), include references to the transferee or lessee.

(3) The exercise by a person of the rights or 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 rights or powers were exercised by Network Rail.

(4) The consent of the Secretary of State is required for the exercise of the powers of paragraph (1), except where the transferee or lessee is the East West Railway Company Limited.

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

**35.**—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990<sup>(1)</sup> in relation to a nuisance falling within paragraph (g) of section 79(1)<sup>(2)</sup> 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 may be imposed, under section 82(2) of that Act if the defendant shows—

- (a) that the nuisance relates to premises used by Network Rail for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to the authorised works and that the nuisance is attributable to the carrying out of the authorised works which are being carried out in accordance with a notice served under section 60

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(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).

(control of noise on construction sites), or a consent given under section 61(3) (prior consent for work on construction sites) or section 65(4) (noise exceeding registered level), of the Control of Pollution Act 1974(5); or

- (b) that the nuisance is a consequence of the construction, operation or maintenance of the authorised works and that it cannot reasonably be avoided.

(2) 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) of the Control of Pollution Act 1974 and section 65(8) of that Act (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 Network Rail for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works.

(3) In proceedings for an offence under section 80(4) of the Environmental Protection Act 1990 (offence of contravening abatement notice) in respect of a statutory nuisance falling within section 79(1)(g) or (ga)(6) of that Act where the offence consists in contravening requirements imposed by virtue of section 80(1)(a) or (b)(7) of that Act, it is a defence to show that the nuisance—

- (a) is a consequence of the construction, operation or maintenance of the works authorised by this Order; and  
 (b) cannot reasonably be avoided.

(4) The provisions of this article do not affect the application to the authorised works of section 122 (statutory authority as a defence to actions in nuisance, etc.) of the Railways Act 1993(8) or any rule of common law having similar effect.

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

**36.**—(1) Network Rail 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), Network Rail 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 operate and use railway**

**37.**—(1) Network Rail may operate and use the railway and other 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 (the provision of railway services) of the Railways Act 1993.

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(3) 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).

(4) 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.

(5) 1974 c. 40.

(6) Section 79(1)(ga) was inserted by section 2(1) and (2)(b) of the Noise and Statutory Nuisance Act 1993.

(7) Section 80(1) was amended by section 86 of the Clean Neighbourhoods and Environment Act 2005.

(8) 1993 c. 43. Section 122 was amended by the Transport Act 2000 (c. 38) and the Railways Act 2005 (c. 14).

### **Planning Permission**

**38.** Planning permission which is deemed by a direction under section 90(2A)(9) (development with government authorisation) of the 1990 Act to be granted in relation to the authorised works is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as operation land for the purposes of that Act) of that Act.

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

- 39.** Any person who, without reasonable excuse—
- (a) obstructs any person acting under the authority of Network Rail 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 Network Rail,

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**

- 40.** A person who—
- (a) enters a factory, workshop or workplace under the provisions of article 20 (protective works to buildings) or article 21 (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.

### **Statutory undertakers etc.**

- 41.** The provisions of Schedule 15 (provisions relating to statutory undertakers etc.) have effect.

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

**42.** Network Rail 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, the deposited sections and the 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**

- 43.—(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.

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(9) Section 90(2A) was inserted by section 16(1) of the Transport and Works Act 1992 (c. 42).

(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<sup>(10)</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.

(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.

### **Protection of interests**

44. Schedule 16 (protective provisions) has effect.

### **No double recovery**

45. 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.

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(10) 1978 c. 30.

### **Arbitration**

**46.** 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.