
STATUTORY INSTRUMENTS

2015 No. 1876

The Network Rail (Tinsley Chord) Order 2015

PART 5

MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

31.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised works or the right to operate the same; and
- (b) any agreement entered into by the promoter with any person for the construction, maintenance, use or operation of the authorised works, or any part of them,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants affects the operation of any agreement to which this article applies.

(3) No such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Trespass

32.—(1) Any person who—

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

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 authorised tramroad was clearly exhibited and maintained

at the station on the authorised tramroad nearest the place where the offence is alleged to have been committed.

Power to contract for police services

33.—(1) The promoter may enter into any agreement with a local policing body and its chief officer for the police force maintained by that body to provide policing services for or in connection with the authorised tramroad, including at any tramroad premises.

(2) Any such agreement may provide for—

- (a) the promoter to make such payment or other consideration for those policing services as the parties may agree; and
- (b) such incidental and ancillary matters at the parties consider appropriate.

(3) In this article—

- (a) “chief officer” means a chief officer of police within the meaning of the Police Act 1996(1) or the Chief Constable of the British Transport Police Force; and
- (b) “local policing body” means a local policing body within the meaning of that Act or the British Transport Police Authority within the meaning of the Railways and Transport Safety Act 2003(2).

Application of general provisions of 1988 Act and 1989 Act

34. The following provisions of the 1988 Act and 1989 Act conferring general powers on the Executive with respect to the LRT system, have effect as if, for any reference in those provisions to the LRT system as defined by those Acts, there were substituted a reference to the authorised tramroad—

in the 1988 Act—

- section 41 (bylaws relating to LRT system); and
- section 44 (rating of LTR system); and

in the 1989Act—

- section 16 (interpretation for Part 5);
- section 17 (operation of Part 5);
- section 18 (penalty fares);
- section 19 (amount of penalty fare);
- section 20 (document to be issued in connection with penalty fare requirement);
- section 21 (notice of penalty fare provisions);
- section 22 (supplementary provisions);
- section 23 (exclusive of double liability);
- section 27 (bylaws); and
- section 28 (powers of disposal, agreements for operation etc.).

Disclosure of confidential information

35. A person who—

(1) 1996 c. 16.
(2) 2003 c. 20.

- (a) enters a factory, workshop or workplace under article 9 (protective works to buildings), or article 10 (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 persons performance of a duty in connection with the purposes for which the person was authorised to enter the land.

Defence in respect of statutory nuisance

36.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990⁽³⁾ in relation to a nuisance falling within paragraph (g) of section 79(1)⁽⁴⁾ (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 may 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 the authorised works and that the nuisance is attributable to the carrying out of 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⁽⁵⁾ (prior consent for work on construction sites) of the Control of Pollution Act 1974⁽⁶⁾; or
- (b) that the nuisance is a consequence of the operation or maintenance of the authorised tramroad and that it cannot reasonably be avoided.

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

- (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 any rule of common law having similar effect.

Statutory undertakers

37. The provisions of Schedule 7 (provisions relating to statutory undertakers) have effect.

For the protection of the Environment Agency

38. The provisions of Schedule 8 (for the protection of the Environment Agency) have effect.

(3) 1990 c. 43.

(4) 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).

(5) 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).

(6) 1974 c. 40.

For the protection of electricity, gas, water and sewerage undertakers

39. The provisions of Schedule 9 (for the protection of electricity, gas, water and sewerage undertakers) have effect.

Certification of plans etc.

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

41.—(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 (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 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, 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 transmission 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

42. 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

43. Any difference under any provision of this Order, unless otherwise provided for, is to 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.