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STATUTORY INSTRUMENTS

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**2012 No. 2284**

**The Network Rail (Ipswich Chord) Order 2012**

**PART 7**

**MISCELLANEOUS AND GENERAL**

**Operational land for purposes of the 1990 Act**

**28.** Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

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

**29.**—(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 nuisance) 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 may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
  - (i) relates to premises used by Network Rail for the purposes of or in connection with the construction or maintenance of the authorised project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or section 65 (noise exceeding registered level), of the Control of Pollution Act 1974<sup>(2)</sup>; or
  - (ii) is a consequence of the construction or maintenance of the authorised project and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
  - (i) relates to premises used by Network Rail for the purposes of or in connection with the use of the authorised project and that the nuisance is attributable to the use of the authorised project which is being used in accordance with a scheme of mitigation of noise approved by the relevant planning authority as described in requirement 10 (noise mitigation Railway Cottages) in Part 2 (requirements) of Schedule 1 (authorised development and requirements); or
  - (ii) is a consequence of the use of the authorised project 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

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<sup>(1)</sup> 1990 c. 43. There are amendments to this Act which are not relevant to this Order.

<sup>(2)</sup> 1974 c. 40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the [Environmental Protection Act 1990, c. 25](#). There are other amendments to the 1974 Act which are not relevant to this Order.

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), does not apply where the consent relates to the use of premises by Network Rail for the purposes of or in connection with the construction or maintenance of the authorised project.

### **Protections of interests**

**30.** Schedule 7 (protective provisions) has effect.

### **Application of the Land Compensation Act 1973**

**31.**—(1) Any regulations made by the Secretary of State under section 20 (sound proofing of buildings affected by public works) and 20A (power to make payments in respect of caravans and other structures affected by noise of public works) of the Land Compensation Act 1973<sup>(3)</sup> which apply to a railway provided or used in the exercise of statutory powers apply to the railway comprised in the authorised project as if that railway was provided or used in the exercise of statutory powers.

(2) Section 28 (power to pay expenses) of the Land Compensation Act 1973 has effect as if any works comprised in the authorised project were public works for the purposes of that section.

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

**32.**—(1) Network Rail must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the book of reference as submitted in the application for this Order;
- (b) the land plans as submitted in the application for this Order—

- Sheet 1 May 2011;
- Sheet 2 May 2011;
- Sheet 3 May 2011; and
- Sheet 4 May 2011;

- (c) the works plans—

- B1469500-IPS/IP.GAD/0003 Rev A02 dated 29 November 2011 and submitted to the Examining authority in connection with the examination of the application for this Order;

- B1469500-IPS/IP.GAD/0004 Rev A02 dated 29 November 2011 and submitted to the Examining authority in connection with the examination of the application for this Order;

- B1469500-IPS/IP.GAD/0005 Rev A01 as submitted in the application for this Order;

- B1469500-IPS/IP.GAD/0006 Rev A01 as submitted in the application for this Order;

- B1469500-IPS/IP.GAD/0007 Rev A01 as submitted in the application for this Order;

- B1469500-IPS/IP.GAD/0008 Rev A01 as submitted in the application for this Order;
- and

- B1469500-IPS/IP.GAD/0009 Rev A01 as submitted in the application for this Order;

- (d) the design drawings as submitted in the application for this Order—

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(3) 1973 c. 26. Section 20 was amended by subsections (6) and (12) of section 146 of, and Schedule 13 to, the Road Traffic Regulation Act 1984 (c. 27). Subsection (10) of section 20 was repealed by section 343(3) of, and Schedule 25 to, the Highway Act 1980 (c. 66) and subsection (11) was repealed by section 155 of, and Schedule 25 to, the Rent Act 1977 (c. 42). There are other amendments to the 1973 Act which are not relevant to this Order.

B1469500-IPS/IP.GAD/0101 Rev A02;  
B1469500-IPS/IP.GAD/0010 Rev A02;  
B1469500-IPS/IP.GAD/0011 Rev A02;  
B1469500-IPS/IP.GAD/0022 Rev A02;  
B1469500-IPS/IP.GAD/0030 Rev A02;  
B1469500-IPS/IP.GAD/0040 Rev A02;  
B1469500-IPS/IP.GAD/0042 Rev A02;  
B1469500-IPS/IP.GAD/0043 Rev A02;  
B1469500-IPS/IP.GAD/0050 Rev A02;  
B1469500-IPS/IP.GAD/0060 Rev A02;  
B1469500-IPS/IP.GAD/0061 Rev A02;  
B1469500-IPS/IP.GAD/0070 Rev A02;  
B1469500-IPS/IP.GAD/0071 Rev A02;  
B1469500-IPS/IP.GAD/0072 Rev A02;  
B1469500-IPS/IP.GAD/0074 Rev A02; and

(e) the environmental statement as submitted in the application for this Order, for certification that they are true copies of the plans, drawings and documents referred to in this Order.

(2) A plan, drawing or 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**

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

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) 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(4) 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.

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(4) 1978 c. 30.

(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 only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(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 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.

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

### **Arbitration**

**34.** 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.

### **Procedure in relation to approvals etc. under requirements**

**35.** Where an application is made for any consent, agreement or approval required by a requirement under Part 2 (requirements) of Schedule 1 (authorised development and requirements), the following provisions apply, so far as they relate to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission, as if the requirement was a condition imposed on the grant of planning permission—

- (a) sections 78 and 79 of the 1990 Act (right of appeal in relation to planning decisions); and

- (b) any orders, rules or regulations which make provision in relation to appeals under section 78 of the 1990 Act.