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STATUTORY INSTRUMENTS

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**2013 No. 2809**

**The Network Rail (Redditch Branch Enhancement) Order 2013**

**PART 7**

Miscellaneous and general

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

**29.** 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**

**30.—**(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 may 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 development and that the nuisance is attributable to the carrying out of the authorised development 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 development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot be reasonably 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), 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 development.

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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. 43). There are other amendments to the 1974 Act which are not relevant to this Order.

## Traffic regulation

**31.**—(1) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, Network Rail may, at any time for the purposes of the construction of the authorised development permit or prohibit vehicular access in the manner specified in Schedule 9 (traffic regulation) on those roads specified in column (1) and to the extent otherwise described in column (2) of that Schedule.

(2) Without limitation on the scope of the specific powers conferred by paragraph (1) but subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, Network Rail may, in so far as may be expedient or necessary for the purposes of or in connection with construction of the authorised development, at any time prior to the opening of the authorised development for use—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road;
- (c) authorise the use as a parking place of any road;
- (d) make provision as to the direction or priority of vehicular traffic on any road; and
- (e) permit or prohibit vehicular access to any road,

either at all times or at times, on days or during such periods as may be specified by Network Rail.

(3) Network Rail must not exercise the powers of paragraphs (1) and (2) unless it has—

- (a) given not less than 4 weeks' notice in writing of its intention to do so to the chief officer of police and to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may specify in writing within 7 days of its receipt of notice of Network Rail's intention in the case of sub-paragraph (a).

(4) Any prohibition, restriction or other provision made by Network Rail under paragraph (1) or (2)—

- (a) has effect as if duly made by, as the case may be—
  - (i) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or
  - (ii) the local authority in whose area the road is situated as an order under section 32 of the 1984 Act,

and the instrument by which it is effected may specify savings and exemptions (in addition to those mentioned in Schedule 9 (traffic regulation)) to which the prohibition, restriction or other provision is subject; and

- (b) is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004<sup>(3)</sup> (road traffic contraventions subject to civil enforcement).

(5) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by Network Rail from time to time by subsequent exercise of the powers conferred by paragraph (2) at any time prior to the opening of the authorised development for use.

(6) Before complying with the provisions of paragraph (3) Network Rail must consult the chief officer of police and the traffic authority in whose area the road is situated.

(7) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.

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(3) 2004 c.18.

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

**32.**—(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(4) which apply to a railway provided or used in the exercise of statutory powers apply to the railway comprised in the authorised development 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 development were public works for the purposes of that section.

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

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

- (a) the access to works and traffic regulation plan;
- (b) the book of reference;
- (c) the design drawings;
- (d) the environmental reports;
- (e) the footpath stopping up and diversion plan;
- (f) the land plans; and
- (g) the works plan

for certification that they are true copies of the documents referred to in this Order.

(2) A plan 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**

**34.**—(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 of the Interpretation Act 1978(5) 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—

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(4) 1973 c.26. Section 20 was amended by subsection (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.

(5) 1978 c. 30.

- (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 may be 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 must not be taken to 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**

**35.** Except where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) 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 notice in writing to the other) by the President of the Institution of Civil Engineers.

### **Procedure in relation to further approvals, etc., other than under Part 2 of Schedule 1**

**36.—(1)** In this article—

“plans” includes sections, drawings, specifications and particulars (including descriptions of methods of construction).

(2) Where an application is made to the relevant planning authority, the highway authority, or the highway authority acting in the capacity of street authority or traffic authority, for any consent, agreement or approval required under any of the provisions of this Order (other than under Part 2 (requirements) of Schedule 1 (authorised development and requirements)) such application must, where appropriate, be accompanied by proper and sufficient plans of the proposal and such consent, agreement or approval must, if given, be in writing and may be given subject to such reasonable terms and conditions as the authority may require and may not be unreasonably withheld.

(3) If, within 28 days after the application has been submitted to the authority in accordance with this article, it has not intimated its disapproval and the grounds of disapproval, the authority is deemed to have approved the content of the application.

(4) In the event of any refusal or disapproval by the authority, Network Rail may resubmit a revised application, or revised plans in support of the original application, and, in that event, if the authority has not intimated its refusal or disapproval and the grounds of refusal or disapproval within 28 days of the revised application or of revised plans being submitted, it is deemed to have given its consent or agreement to, or its approval of, the revised application or plans.

(5) Network Rail must not carry out the proposal until such plans have been approved (or deemed to have been approved) or settled by arbitration.

(6) Where an application is made to the owner of a sewer or drain for any consent or approval required under article 13 (discharge of water), such consent or approval may not be unreasonably withheld or delayed.

### **Further provisions, as to approvals, etc, under Part 2 of Schedule 1**

**37.**—(1) Where the application is for a 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 a planning permission—

- (a) sections 78 (other than paragraph (a) of subsection (2)) and 79 of the 1990 Act (right of appeal in relation to planning decisions);
- (b) any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission.

(2) For the purposes of paragraph (1), a provision relates to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission in so far as it makes provision in relation to an application for such a consent, agreement or approval, or the grant or refusal of such an application, or a failure to give notice of a decision on such an application.

### **Protective provisions**

**38.** Schedule 10 (protective provisions) has effect.

### **Saving for regulated rights, etc.**

**39.** Nothing in this Order affects any estate, right or interest granted by Network Rail in respect of a railway facility which is subject to an access contract within the meaning of Part 1 of the Railways Act 1993.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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