
STATUTORY INSTRUMENTS

2019 No. 1358

The Northampton Gateway Rail Freight Interchange Order 2019

PART 6

MISCELLANEOUS AND GENERAL

Operation and use of railways

38. The undertaker may operate and use the railway comprised in the authorised development and any other elements of the authorised development as a system, or part of a system, of transport for the carriage of goods.

Commencement Information

I1 Art. 38 in force at 30.10.2019, see [art. 1](#)

Operational land for the purposes of the 1990 Act

39. Development consent granted by this Order within that part of the Order limits upon which the highway works are to be carried out 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 operational land for the purposes of that Act) of the 1990 Act.

Commencement Information

I2 Art. 39 in force at 30.10.2019, see [art. 1](#)

Charges

40. The undertaker may demand, take or recover or waive such charges for carrying goods on the railway comprised in the authorised development, and for any other services or facilities provided in connection with the operation of that railway, as it thinks fit.

Commencement Information

I3 Art. 40 in force at 30.10.2019, see [art. 1](#)

Defence to proceedings in respect of statutory nuisance

41.—(1) Where proceedings are brought under section 82(1) (summary proceedings by persons aggrieved by statutory nuisance) of the Environmental Protection Act 1990(1) in relation to a

(1) 1990 c. 43. There are amendments to this section which are not relevant to this Order.

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 may be made, and no fine may be imposed, under section 82(2)(3) of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker 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) of the Control of Pollution Act 1974(4); 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)(5) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of the premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Commencement Information

I4 Art. 41 in force at 30.10.2019, see [art. 1](#)

Felling or lopping of trees and removal of hedgerows

42.—(1) Subject to paragraphs (4) to (6), the undertaker may fell or lop any tree, shrub or hedgerow within 15 metres of any part of the authorised development, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree, shrub or hedgerow—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must not cause unnecessary damage to any tree, shrub or hedgerow and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, must be determined under Part 1 of the 1961 Act.

(4) The provisions of paragraph (1) do not apply without the agreement of the relevant planning authority to any tree or hedgerow identified to be retained in the landscaping scheme approved under requirement 10 (provision of landscaping).

(5) The provisions of paragraph (1) do not apply without the agreement of the relevant highway authority to any tree or hedgerow within a highway.

(2) Section 79(1) was amended by sections 101 and 102 of the Clean Neighbourhood and Environment Act 2005 (c. 16). There are other amendments to that section which are not relevant to this Order.

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

(4) 1974 c. 40. Section 61(2) was amended by section 133(2) of, and Schedule 7 to, the Building Act 1984 (c. 55).

(5) Section 61(9) was amended by paragraph 15(1) and (3) of Schedule 15 to the Environmental Protection Act 1990 (c. 43) and section 120 of, and Schedule 24 to, the Environment Act 1995 (c. 25).

(6) The undertaker may fell or lop or cut back any tree or shrub which is subject to a tree preservation order (as identified in appendix C of the arboricultural assessment) with the prior approval of the relevant planning authority, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development.

(7) In carrying out any activity authorised by paragraph (6)—

(a) the undertaker is not to do unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity; and

(b) the duty contained in section 206(1) (replacement of trees) of the 1990 Act does not apply.

(8) The authority given by paragraph (1) constitutes a deemed consent under the relevant tree preservation order.

Commencement Information

I5 Art. 42 in force at 30.10.2019, see [art. 1](#)

Protective provisions

43. Schedule 13 (protective provisions) to this Order has effect.

Commencement Information

I6 Art. 43 in force at 30.10.2019, see [art. 1](#)

Governance of requirements and governance of protective provisions relating to highway works

44.—(1) When in any requirement or in Parts 2 and 3 of Schedule 13 (protective provisions) approval or agreement is required of, or with, anybody in relation to the content, carrying out or use of the authorised development (including the approval of details or plans under the requirements) such approval or agreement—

(a) must not be given if it would permit a change to the development which would give rise to any materially new or materially different significant effects on the environment that have not been assessed in the environmental statement; and

(b) is to be treated as if it were a “subsequent application” under the provisions of the 2017 EIA Regulations (whether or not it accords with the definition of “subsequent application” in the 2017 EIA Regulations) and the provisions of the 2017 EIA Regulations apply accordingly.

(2) When any details, plans or other matters have been agreed or approved by the relevant planning authority under a requirement or the relevant highway authority under a requirement or Parts 2 and 3 of Schedule 13 then such details, plans or other matters may subsequently be amended by agreement with the relevant planning authority or relevant highway authority, as the case may be, provided that no amendments to those details, plans or other matters may be approved where such amendments would permit a change to the development which would give rise to any materially new or materially different significant effects on the environment that have not been assessed in the environmental statement.

(3) Where a consent, agreement or approval is required or requested by the undertaker under a requirement then the procedure set out in Part 2 of Schedule 2 (procedure for approvals etc. under

requirements) for obtaining such consent, agreement or approval, and appealing against the refusal or failure to approve or refuse such consent, agreement or approval, applies.

Commencement Information

I7 Art. 44 in force at 30.10.2019, see [art. 1](#)

Disapplication, application and modification of legislative provisions

45.—(1) The following provisions do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction of the authorised development—

- (a) section 23 (prohibition of obstructions, etc. in watercourses) of the Land Drainage Act 1991(6) in relation to watercourses for which Northamptonshire County Council is the drainage board concerned;
- (b) section 32(7) (variation of awards) of the Land Drainage Act 1991;
- (c) the provisions of any byelaws made under section 66(8) (powers to make byelaws) of the Land Drainage Act 1991; and
- (d) section 28E (duties in relation to sites of special scientific interest) of the Wildlife and Countryside Act 1981(9).

(2) The provisions of the Neighbourhood Planning Act 2017(10) do not apply in so far as they relate to the temporary possession of land under articles 34 (temporary use of land for carrying out the authorised development) and 35 (temporary use of land for maintaining the authorised development) of this Order.

(3) Any development, or any part of a development, within the Order limits which is constructed or used under the authority of a planning permission pursuant to Part 3 of the 1990 Act (whether express or otherwise) following the coming into force of this Order is to be disregarded at all times for the purposes of ascertaining whether or not an offence has been committed under the provisions of sections 160 (development without development consent) and 161 (breach of terms of order granting development consent) of the 2008 Act(11).

(4) Regulation 4 (requirement for consent) of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007(12) does not apply to any advertisement erected in the location and in accordance with the parameters shown on the parameters plan as S1 and S2.

(5) This Order does not constitute a planning permission for the purposes of Part 11 of the 2008 Act (community infrastructure levy) notwithstanding the definition of planning permission contained within regulation 5(13) (meaning of planning permission) of the 2010 Regulations.

(6) 1991 c. 59. Section 23 was amended by section 31 of, and paragraphs 25 and 32 of Schedule 2 to, the Flood and Water Management Act 2010 (c. 29).

(7) Section 32 was amended by S.I. 2013/755.

(8) Section 66 was amended by section 31 of, and paragraphs 25 and 38 of Schedule 2 to, the Flood and Water Management Act 2010 (c. 29) and section 86(1) and (3) of the Water Act 2014 (c. 21). There are other amendments to section 66 but none are relevant.

(9) 1981 c. 69. Section 28E was amended by section 105(1) of, and paragraphs 79 and 80 of Part 1 of Schedule 11 to, Natural Environment and Rural Communities Act 2006 (c. 16).

(10) 2017 c. 20.

(11) Sections 160 and 161 were amended by S.I. 2015/664. Section 161 was also amended by section 112(2) of, and paragraph 4 of Part 1 of Schedule 8 to, the Marine and Coastal Access Act 2009 (c. 23).

(12) S.I. 2007/783.

(13) Regulation 5 was amended by S.I. 2012/2975 and S.I. 2013/982.

(6) Schedule 14 (miscellaneous controls) to this Order, which makes provision applying, modifying and excluding statutory provisions which relate to matters for which provision may be made by this Order, has effect.

(7) Paragraphs (1) to (6) only apply in so far as those provisions are not inconsistent with the 2017 EIA Regulations and any orders, rules or regulations made under the 2008 Act.

Commencement Information

18 Art. 45 in force at 30.10.2019, see [art. 1](#)

Certification of plans and documents

46.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of the plans and documents identified in Schedule 16 (certification of plans and documents) for certification that they are true copies of those plans and documents

(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.

Commencement Information

19 Art. 46 in force at 30.10.2019, see [art. 1](#)

Service of notices

47.—(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(**14**), 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 that land (describing it); and

(14) 1978 c. 30.

- (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 may 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—
 - “electronic transmission” means a communication transmitted—
 - (a) by means of electronic communications network; or
 - (b) by other means but while in electronic form; and
 - “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.

Commencement Information

I10 Art. 47 in force at 30.10.2019, see [art. 1](#)

Arbitration

48. 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 or is the subject of enforcement action under Part 8 of the 2008 Act, 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—

- (a) in the case of matters pertaining to land and the surveying of such land, the president of the Royal Institute of Chartered Surveyors;
- (b) in the case of matters of legal interpretation, the president of the Law Society; and

(c) in the case of all other matters the president of the Institute of Civil Engineers.

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Commencement Information

I11 Art. 48 in force at 30.10.2019, see [art. 1](#)

Changes to legislation:

There are currently no known outstanding effects for the The Northampton Gateway Rail Freight Interchange Order 2019, PART 6.