
STATUTORY INSTRUMENTS

1997 No. 264

**The London Underground (East
London Line Extension) Order 1997**

PART IV

MISCELLANEOUS AND GENERAL

Agreements with Railtrack

26.—(1) In this article—

“the designated lands” means so much of the land of Railtrack as is described in article 17(2) of this Order;

“the specified works” means so much of the scheduled works as will be constructed on or over the designated lands.

(2) Any work of alteration or adaptation of property of Railtrack which may be necessary in order to construct the specified works and thereafter the use, maintenance, repair and renewal of such property and of the specified works shall be carried out and regulated by the Company or Railtrack, or by the Company and Railtrack jointly, in accordance with such terms and conditions as may be agreed in writing between the Company and Railtrack.

(a) (3) (a) Any agreement made under this article may relate to the whole or part of the designated lands or the specified works and may contain such incidental, consequential or supplementary provisions as may be so agreed, including (but without prejudice to the generality of the foregoing) provisions—

(i) with respect to the defraying of, or the making of contributions towards, the cost of such works or alteration or adaptation or the costs of such maintenance, repair and renewal as are referred to in paragraph (2) above by the Company or by Railtrack or by the Company and Railtrack jointly; and

(ii) for the exercise by Railtrack, or by the Company, or by Railtrack and the Company jointly, of all or any of the powers and rights of Railtrack and the Company (as the case may be) in respect of any part of the designated lands or the specified works under any enactment or contract.

(b) The exercise by the Company or Railtrack or by the Company and Railtrack jointly, of any powers and rights under any enactment or contract pursuant to any such agreement as is authorised by sub-paragraph (a) above shall be subject to all statutory and contractual provisions relating thereto as would apply if such powers and rights were exercised by the Company or Railtrack (as the case may be) alone, and accordingly such provisions shall with any necessary modifications apply to the exercise of such powers and rights by the Company or Railtrack, or by the Company and Railtrack jointly, as the case may be.

(4) In constructing the specified works the Company may re-align so much of the North London Line as lies within the limits of deviation of Work No. 1 in such position and on such terms as shall be agreed between the Company and Railtrack.

(5) The Company and Railtrack may enter into, and carry into effect, agreements for the transfer to the Company of—

- (a) any part of the designated lands,
- (b) any lands, works or other property held in connection with any part of the designated lands, and
- (c) any rights and obligations (whether or not statutory) of Railtrack relating to any part of the designated lands.

(6) In this article “the North London Line” has the same meaning as in Part I of Schedule 1 to this Order.

Transfer of rights and obligations

27.—(1) In this article—

“the 1861 Act” means the North London Railway (City Branch) Act 1861(1);

“the railway land” means any land which is acquired by the Company from the railways board or Railtrack for the purposes of this Order or is acquired by the Company from the railways board pursuant to article 23 above, other than the land upon which the viaduct is situated;

“the viaduct” means so much of the viaduct which formerly carried the City branch of the North London Railway of the railways board between Worship Street and Haggerston Road in the London Borough of Hackney authorised by the 1861 Act as is acquired by the Company for the purposes of this Order, together with all works and conveniences forming part of or connected with the viaduct, and includes the land on which the viaduct is situated.

(2) Unless otherwise agreed in writing between the Company and Railtrack or the railways board (as the case may be), all the rights and obligations of the railways board and Railtrack, whether statutory or otherwise, relating to the railway land and the viaduct shall be transferred to the Company to the exclusion of the railways board and Railtrack by virtue of this Order on the date upon which the Company enters upon the viaduct and the railway land under the powers conferred by article 17 above.

(3) In this article “the City branch of the North London Railway” has the same meaning as in Part I of Schedule 1 to this Order.

Statutory undertakers etc.

28. The provisions of Schedule 9 to this Order shall have effect.

For protection of Railtrack

29.—(1) For the protection of Railtrack the following provisions shall, unless otherwise agreed in accordance with the provisions of article 26 above or otherwise agreed in writing between the Company and Railtrack for the purposes of this article, apply and have effect.

(2) In this article—

“construction” includes reconstruction and for the purposes of paragraphs (11) and (13) of this article includes maintenance and repair of the specified works;

“the engineer” means an engineer to be appointed by Railtrack;

“plans” includes sections, drawings, particulars and schedules of construction;

“railway property” means any railway of Railtrack, and any works, apparatus and equipment of Railtrack connected therewith and includes any lands held or used by Railtrack for the purposes of such railway or works, apparatus and equipment; and

“the specified works” means so much of the authorised works as may be situated upon, across, under, over or within 15 metres of railway property or may in any way affect railway property.

(3) The exercise by the company against Railtrack of the powers of article 15 above or the powers of section 11(3) of the 1965 Act shall be confined to lands in relation to which the Company’s powers of compulsory acquisition are not subject to the consent of Railtrack under article 17(2) above.

(a) (4) (a) The Company shall, before commencing the construction of the specified works, furnish to Railtrack such proper and sufficient plans thereof (including particulars as to the working methods and the regulation of traffic in the vicinity of the specified works) as may reasonably be required by the engineer and shall not commence the specified works until plans thereof have been approved in writing by the engineer or settled by arbitration as provided in sub-paragraph (b) below.

(b) The engineer’s approval under sub-paragraph (a) above shall not be unreasonably withheld and any question of whether it has been unreasonably withheld shall be settled by arbitration, and in any event if within 56 days after such plans have been furnished to Railtrack the engineer has not notified his disapproval thereof and the grounds of his disapproval, he shall be deemed to have approved the plans as submitted.

(5) If within 56 days after such plans have been furnished to Railtrack, Railtrack give notice to the Company that Railtrack desire themselves to construct any part of the specified works, which in the opinion of the engineer will or may affect the stability of railway property and the safe operation of the railways of Railtrack or the services of operators using the same, then, if the Company desire such part of the specified works to be constructed, Railtrack shall construct it with all reasonable dispatch on behalf of, and to the reasonable satisfaction of, the Company in accordance with the plans approved or deemed to be approved or settled as aforesaid.

(6) Upon signifying his approval or disapproval of the plans the engineer may specify any protective works (including any relocation of works, apparatus and equipment necessitated by the specified works), whether temporary or permanent, which in his opinion should be carried out before the commencement of the construction of the specified works to ensure the stability of railway property, the continuation of safe and effective operation of the railways of Railtrack or the services of operators using the same and the comfort and safety of the passengers who may be affected by the specified works, and such protective works as may be reasonably necessary for those purposes shall be constructed by Railtrack with all reasonable dispatch, or, if Railtrack so desires, such protective works shall be carried out by the Company at its own expense and the Company shall not commence the construction of the specified works until the engineer has notified the Company that the protective works have been completed.

(7) The Company shall give to the engineer not less than 56 days' notice of their intention to commence the construction of any of the specified works and also, except in emergency (when they shall give such notice as may be reasonably practicable), of their intention to carry out any works for the repair or maintenance of the specified works in so far as such works of repair or maintenance affect or interfere with railway property.

(a) (8) (a) The construction of the specified works and of any protective works carried out by the Company by virtue of the provisions of paragraph (6) above shall, when commenced, be carried out with all reasonable dispatch in accordance with the plans approved or deemed to be approved or settled as aforesaid and under the supervision (if given), and to the reasonable satisfaction, of the engineer, and in such manner as to cause as little damage as may be to railway property and as little interference as may be with the conduct of traffic on the railways of Railtrack and the use by passengers of railway property and, if any damage to railway property or any such interference shall be caused

by the carrying out of the specified works the Company shall, notwithstanding any such approval as aforesaid, make good such damage and shall pay to Railtrack all reasonable expenses to which they may be put and compensation for any loss which they may sustain by reason of any such damage or interference.

- (b) Nothing in this paragraph shall impose any liability on the Company with respect to any damage, cost, expense or loss which is attributable to the act, neglect or default of Railtrack or their servants or agents.

(9) The Company shall at all times afford reasonable facilities to the engineer for access to the specified works during their construction and shall supply him with all such information as he may reasonably require with regard to the specified works or the method of construction thereof.

(10) During the construction of any works by Railtrack under this article Railtrack shall at all times afford reasonable facilities to the Company and their agents for access to those works, and shall supply the Company with such information as they may reasonably require with regard to such works or the method of construction thereof.

- (a) (11) (a) If any alterations or additions, either permanent or temporary, to railway property shall be reasonably necessary during the construction of the specified works, or during a period of 12 months after the completion thereof, in consequence of the construction of the specified works, such alterations and additions may be carried out by Railtrack and, if Railtrack give to the Company reasonable notice of their intention to carry out such alterations or additions, the Company shall pay to Railtrack the reasonable cost thereof including, in respect of permanent alterations and additions, a capitalised sum representing any increase in the costs which may be expected to be reasonably incurred by Railtrack in maintaining, working and, when necessary, renewing any such alterations or additions.
- (b) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions, a capitalised sum representing such saving shall be set off against any sum payable by the Company to Railtrack under this article.

(12) The Company shall repay to Railtrack all reasonable costs, charges and expenses reasonably incurred by Railtrack—

- (a) in constructing any part of the specified works on behalf of the Company as provided by paragraph (5) of this article or in constructing any protective works under the provisions of paragraph (6) of this article, including, in respect of any permanent protective works, a capitalised sum representing the costs which may be expected to be reasonably incurred by Railtrack in maintaining and renewing such works;
- (b) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works;
- (c) in respect of any special traffic working resulting from any speed restrictions which may, in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of the specified works, or from the substitution or diversion of services which may be reasonably necessary for the same reason;
- (d) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of the specified works; and
- (e) in respect of the supervision by the engineer of the construction of the specified works.

- (a) (13) (a) The Company shall be responsible for, and make good to Railtrack, all reasonable costs, charges, damages and expenses not otherwise provided for in this article which may be occasioned to, or reasonably incurred by, Railtrack—
- (i) by reason of the construction of the specified works (as opposed to their existence) or the failure thereof; or
 - (ii) by reason of any act or omission of the Company or of any person in its employ, or of its contractors or others whilst engaged upon the construction of the specified works;
- and the Company shall indemnify Railtrack from and against all claims and demands arising out of or in connection with the construction of the specified works or any such failure, act or omission as aforesaid, and the fact that any act or thing may have been done in accordance with any requirement of the engineer or under his supervision shall not (if it was not attributable to the act, neglect or default of Railtrack or of any person in their employ, or of their contractors or agents) excuse the Company from any liability under the provisions of this article.
- (b) Any liability of the Company under this paragraph shall be reduced proportionately to the extent to which any costs, charges, damages and expenses are attributable to the act neglect or default of Railtrack or of any person in their employ, or of their contractors or agents.
- (c) Railtrack shall give to the Company reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the Company.
- (14) Any difference arising between the Company and Railtrack under this article (other than a difference as to its meaning or construction) shall be referred to and settled by arbitration.

Public Open Space

30.—(1) As from the date on which this Order comes into force, the date on which the special category land is vested in the Company or the date on which the exchange land is vested in the Company, whichever is the latest, the exchange land shall vest in the person in whom the special category land was vested immediately before it was vested in the Company, subject to the like rights, trusts and incidents as attached to the special category land; and the special category land shall thereupon be discharged from all rights trusts and incidents to which it was previously subject.

(2) In this article—

“special category land” means the lands delineated on the deposited plans and thereon numbered 45a, 46a, 50a, 53a, 55a, 55b, 56a and 59a in the London borough of Tower Hamlets; and

“exchange land” means the lands delineated on the deposited plans and thereon numbered 27c and 42c in the London borough of Tower Hamlets.

Certification of plans etc.

31. The Company shall, 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 true copies of, respectively, the book of reference, the deposited sections and deposited plans referred to in this Order; and a document so certified shall be admissible in any proceedings as evidence of its contents.

Service of notices

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

(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(2) as it applies for the purposes of this article, the proper address of any person in relation to the service on him of a notice or document under paragraph (1) above 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, his last known address at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorized to be served on a person as having any interest in, or as the occupier of, land and his name or address cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to him 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) This article shall not be taken to exclude the employment of any method of service not expressly provided for by it.

No double recovery

33. Compensation shall not be payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law.

Arbitration

34. Any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) shall 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 for the time being of the Institution of Civil Engineers.