
STATUTORY INSTRUMENTS

2001 No. 2870

The Railtrack (Shortlands Junction) Order 2001

PART I

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Railtrack (Shortlands Junction) Order 2001 and shall come into force on 18th July 2001.

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(1);

“the 1965 Act” means the Compulsory Purchase Act 1965(2);

“the 1984 Act” means the Road Traffic Regulation Act 1984(3);

“the Applications Rules” means the Transport and Works (Applications and Objections Procedure) Rules 1992, and references in this Order to numbered rules are to the Applications Rules bearing those numbers;

“authorised works” means the scheduled works and any other works authorised by this Order;

“the book of reference” means the book of reference described in rule 7(5) certified by the Secretary of State as the book of reference for the purposes of this Order;

“the deposited plans” means the plans prepared in pursuance of rule 7(1) and (3) certified by the Secretary of State as the deposited plans for the purposes of this Order and references to land shown on those plans are references to land so shown in pursuance of rule 7(3);

“carriageway” and “footpath” have the same meaning as in the Highways Act 1980(4);

“the deposited sections” means the sections described in rule 7(2) certified by the Secretary of State as the deposited sections for the purposes of this Order;

“enactment” includes any order, byelaw, rule, regulation, scheme or other instrument having effect by virtue of an enactment;

“the limits of deviation”, in relation to a work, means the limits of deviation related to that work which are shown on the deposited plans;

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace; and

“maintenance” shall be construed accordingly;

(1) 1961 c. 33.

(2) 1965 c. 56.

(3) 1984 c. 27.

(4) 1980 c. 66.

“the Order limits” means any of the limits of deviation or the limits of land to be acquired or used under article 11, 15(3) or 16 below;

“owner”, in relation to land, means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple of land (whether in possession or reversion) and includes a person holding, or entitled to the rents and profits of, the land under a lease or tenancy having an unexpired term exceeding 3 years;

“Railtrack” means Railtrack PLC;

“the scheduled works” means the works specified in Schedule 1 to this Order;

“street” includes part of a street;

“street authority” in relation to a street has the same meaning as in Part III of the Street Works Act;

“the Street Works Act” means the New Roads and Street Works Act 1991⁽⁵⁾; and

“the tribunal” means the Lands Tribunal.

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in or on land or in the air space over its surface.

(3) All directions, distances and lengths stated in any description of works, powers or lands shall be construed as if the words “or thereabouts” were inserted after each such direction, distance and length.

(4) Any reference in this Order to a work identified by the number of the work shall be construed as a reference to the work of that number authorised by this Order.

Incorporation of the Railways Clauses Consolidation Act 1845

3.—(1) The following provisions of the Railways Clauses Consolidation Act 1845⁽⁶⁾ shall be incorporated in this Order—

section 24 (obstructing construction of railway), subject to the modification in paragraph (3) below;

section 58 (company to repair roads used by them), except for the words from “and if any question” to the end;

section 68 (accommodation works by company);

section 71 (additional accommodation works by owners), except for the words “or directed by such justices to be made by the company” and “or, in case of difference, as shall be authorised by two justices”;

sections 72 and 73 (supplementary provisions relating to accommodation works);

section 77 (presumption that minerals excepted from acquisition of land);

sections 78 to 85E and Schedules 1 to 3 (minerals under railways), as respectively substituted and inserted by section 15 of the Mines (Working Facilities and Support) Act 1923⁽⁷⁾;

section 145 (recovery of penalties); and

section 154 (transient offenders).

(2) In those provisions, as incorporated in this Order—

“the company” means Railtrack;

⁽⁵⁾ 1991 c. 22.

⁽⁶⁾ 1845 c. 20.

⁽⁷⁾ 1923 c. 20.

“prescribed”, in relation to any such provision, means prescribed by this Order for the purposes of that provision;

“the special Act” means this Order.

(3) Section 24 of the said Act of 1845, as incorporated in this Order, shall have effect as if the maximum fine which may be imposed on summary conviction of an offence under that section were instead of a fine not exceeding level 2 on the standard scale, a fine not exceeding level 3 on the standard scale.

PART II

WORKS

Principal powers

Power to construct and maintain scheduled works

4.—(1) Railtrack may construct and maintain the scheduled works.

(2) Subject to article 6 below, the scheduled works shall be constructed in the lines or situations shown on the deposited plans and in accordance with the levels shown on the deposited sections.

Power to construct and maintain ancillary works

5.—(1) Railtrack may, within the limits of deviation for the scheduled works, do such of the following as may be necessary or expedient for the purposes of, in connection with or in consequence of, the construction of the scheduled works, namely—

- (a) make, provide and maintain all such approaches, bridges, ramps, means of access, shafts and stagings as Railtrack thinks fit;
- (b) construct, provide and maintain all such embankments, aprons, abutments, retaining walls, wing walls, culverts and other works as may be necessary or convenient;
- (c) alter the position of apparatus, including mains, sewers, drains and cables;
- (d) alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses; and
- (e) carry out and maintain such other works, of whatever description, as may be necessary or expedient.

(2) Railtrack may within the Order limits—

- (a) carry out and maintain landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised works; and
- (b) carry out and maintain works for the benefit or protection of land affected by the authorised works.

Power to deviate

6.—(1) In constructing or maintaining any scheduled work, Railtrack may—

- (a) subject to paragraph (2) below deviate laterally from the lines or situations shown on the deposited plans within the limits of deviation for that work so shown; and
- (b) deviate vertically from the levels shown on the deposited sections to any extent not exceeding—

- (i) in relation to Work No. 5A and Work No. 5B, one metre upwards or downwards; and
- (ii) in relation to any other work, one and a half metres upwards or downwards.

(2) The centre line of any track comprised in Work No. 3 shall not be located any closer to the houses on the southern side of the existing railway than the centre line for that work shown on the deposited plans.

Discharge of water

7.—(1) Railtrack may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised works and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, sewer or drain.

(2) Railtrack shall not discharge any water into any watercourse, public sewer or drain except with the consent of the authority to which it belongs; and such consent may be given subject to such terms and conditions as the authority may reasonably impose but shall not be unreasonably withheld.

(3) Railtrack shall not make any opening into any public sewer or drain except in accordance with plans approved by, and under the superintendence (if provided) of, the authority to which the sewer or drain belongs, but such approval shall not be unreasonably withheld.

(4) Railtrack shall not, in the exercise of the powers conferred by this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(5) Railtrack shall take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance or oil or matter in suspension.

(6) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991(8).

(7) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board, a local authority or a joint planning board;
- (b) “watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and
- (c) other expressions used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

Safeguarding works to buildings

8.—(1) Subject to the following provisions of this article, Railtrack may at its own expense and from time to time carry out such safeguarding works to any building within the Order limits as Railtrack considers to be necessary or expedient.

(2) Safeguarding works may be carried out—

- (a) at any time before or during the construction in the vicinity of the building of any part of the authorised works; or
- (b) after the completion of the construction of that part of the authorised works, at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised works is first opened to use.

(8) 1991 c. 57.

(3) For the purpose of determining how the functions under this article are to be exercised Railtrack may enter and survey any building falling within paragraph (1) above and any land belonging to it.

(4) For the purpose of carrying out safeguarding works under this article to a building Railtrack may (subject to paragraphs (5) and (6) below)—

- (a) enter the building and any land belonging to it, and
- (b) where the works cannot be carried out reasonably conveniently without entering land adjacent to the building, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) above to carry out safeguarding works to a building;
- (b) a right under paragraph (3) above to enter a building;
- (c) a right under paragraph (4)(a) above to enter a building or land; or
- (d) a right under paragraph (4)(b) above to enter land,

Railtrack shall, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case within subparagraph (a) or (c) above, specifying the safeguarding works proposed to be carried out.

(6) Where notice is served under paragraph (5)(a), (c) or (d) above, the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the safeguarding works or to enter the building or land to be referred to arbitration under article 31 below.

(7) Railtrack shall compensate the owners and occupiers of any building or land in relation to which the powers of this article have been exercised for any loss or damage arising to them by reason of the exercise of those powers.

(8) Where—

- (a) safeguarding works are carried out under this article to a building, and
- (b) within the period of 5 years beginning with the day on which the part of the authorised works constructed within the vicinity of the building is first opened for use it appears that the safeguarding works are inadequate to protect the building against damage caused by the construction or operation or that part of the works,

Railtrack shall compensate the owners and occupiers of the building for any damage sustained by them.

(9) Nothing in this article shall relieve Railtrack from any liability to pay compensation under section 10(2) of the 1965 Act.

(10) Any compensation payable under paragraph (7) or (8) above shall be determined, in case of dispute, under Part I of the 1961 Act.

(11) In this article—

- (a) “building” includes any structure or erection or any part of a building, structure or erection; and
- (b) “safeguarding works”, in relation to a building, means—
 - (i) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the construction, maintenance or operation of the authorised works; and
 - (ii) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, maintenance or operation of the authorised works.

Power to survey and investigate land

9.—(1) Railtrack may for the purposes of this Order—

- (a) survey or investigate any land within the Order limits;
- (b) without prejudice to the generality of sub-paragraph (a) above, make trial holes in such positions as it thinks fit on any such land to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a) above, carry out ecological or archaeological investigations on any such land;
- (d) place on, leave on and remove from the land apparatus for use in connection with the exercise of any of the powers conferred by sub-paragraphs (a) to (c) above; and
- (e) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (d) above.

(2) No land may be entered, or equipment placed or left on or removed from the land under paragraph (1) above, unless at least 7 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of Railtrack—

- (a) shall, if so required, before or after entering the land produce written evidence of his authority to do so; and
- (b) may take with him such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes shall be made under this article in a carriageway or footway without the consent of the street authority, but such consent shall not be unreasonably withheld.

(5) Railtrack shall make compensation for any damage occasioned, by the exercise of the powers conferred by this article, to the owners and occupiers of the land, such compensation to be determined, in case of dispute, under Part I of the 1961 Act.

(6) Nothing in this article shall obviate any need to obtain scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979(9).

Temporary stopping up of streets

10.—(1) Railtrack, during and for the purposes of the execution of the authorised works, may temporarily stop up, alter or divert so much of Downs Hill (“the street”) as falls within the limits of deviation for Work No. 5A and may for any reasonable time—

- (a) divert the traffic from the street, and
- (b) subject to paragraph (3) below, prevent all persons from passing along the street.

(2) Railtrack may use the street stopped up under the powers of this article as a temporary working site.

(3) Railtrack shall provide reasonable access for pedestrians going to or from premises abutting on the street affected by the exercise of the powers conferred by this article, if there would otherwise be no such access.

(4) Railtrack shall not exercise the powers of this article without first consulting the street authority.

(5) The provisions of the Street Works Act mentioned in paragraph (6) below and any regulations made, or code of practice issued or approved under, those provisions shall apply (with the necessary modifications) in relation to the stopping up, alteration or diversion of the street by Railtrack under

(9) 1979 c. 46.

the powers conferred by this article where no street works are executed in the street as they would apply if the stopping up, alteration or diversion were occasioned by street works executed in the street by Railtrack.

- (6) The provisions of the Street Works Act referred to in paragraph (5) above are—
- section 54 (advance notice of certain works),
 - section 55 (notice of starting date of works),
 - section 59 (general duty of street authority to co-ordinate works),
 - section 60 (general duty of undertakers to co-operate),
 - section 69 (works likely to affect other apparatus in the street),
 - section 76 (liability for cost of temporary traffic regulation),
 - section 77 (liability for cost of use of alternative route), and

all such other provisions as apply for the purposes of the provisions mentioned above.

(7) Any person who suffers loss by the suspension of a private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part I of the 1961 Act.

Temporary widening of carriageways

11.—(1) Railtrack may, for the purpose of providing an improved access to the working site, temporarily increase the width of the carriageways of the relevant streets by incorporating within those carriageways so much of the footways of the relevant streets and of Bromley Road as lies within the limits marked “Limit of temporary widening of access” on the deposited plans.

(2) On giving up possession of the working site Railtrack shall restore the footways referred to in paragraph (1) above to the reasonable satisfaction of the street authority.

(3) For the duration of a period commencing with the completion of the widening of the carriageways of the relevant streets in accordance with paragraph (1) above and terminating on the restoration of the footways of those streets in accordance with paragraph (2) above, the relevant streets, as so widened, shall be maintained by and at the expense of Railtrack.

(4) In this article—

- “the relevant streets” means the streets shown numbered 19 and 20 on the deposited plans; and
- “the working site” means so much of the land shown numbered 18b on the deposited plans as is occupied under article 16 below.

Traffic restrictions

12.—(1) Subject to the provisions of this article Railtrack may during and for the purposes of the authorised works from the commencement of this Order and with the consent of the traffic authority in whose area the relevant street is situated (such consent not to be unreasonably withheld)—

- (a) prohibit or restrict the parking, stopping, waiting or the loading or unloading of vehicles, at any time, in the relevant streets;
- (b) revoke any traffic regulation order in so far as it is inconsistent with any prohibition or restriction made by Railtrack under this paragraph.

(2) Railtrack shall not exercise the powers of this article unless it has—

- (a) given not less than 2 weeks' notice in writing of its intention to do so to the chief officer of police and the traffic authority in whose area the relevant streets are situated, and
- (b) for a period of not less than 2 weeks displayed a notice of its intention to do so at, or as near as possible to, the relevant streets.

(3) Any prohibition or restriction made by Railtrack under paragraph (1) above shall have effect as if duly made by the traffic authority in whose area the relevant street is situated as a traffic regulation order under the 1984 Act.

(4) Any prohibition or restriction made by Railtrack under paragraph (1) above shall not apply to any vehicle of a statutory utility for so long as it is engaged in connection with the laying, erection, alteration, repair or inspection of any apparatus of that utility.

(5) In this article—

“the relevant streets” means the carriageway of the streets shown numbered 19 and 20 on the deposited plans as widened in accordance with article 11 above; and

“statutory utility” means a statutory undertaker for the purposes of the Highways Act 1980 or a public telecommunications operator as defined in paragraph 1(6) of Schedule 4 to this Order.

PART III

ACQUISITION AND POSSESSION OF LAND

Power of acquisition

Power to acquire land

13.—(1) Railtrack may acquire compulsorily so much of the land shown on the deposited plans within the limits of deviation for the scheduled works shown on those plans and described in the book of reference as may be required for or in connection with the authorised works, and may use any land so acquired for those purpose or for any other purposes connected with or ancillary to its railway undertaking.

(2) This article is subject to article 16(8) below.

Application of Part I of the Compulsory Purchase Act 1965

14.—(1) Part I of the 1965 Act, in so far as not modified by or inconsistent with the provisions of this Order, shall apply to the acquisition of land under this Order—

(a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981(10) applies, and

(b) as if this Order were a compulsory purchase order under that Act.

(2) Part I of the 1965 Act, as so applied, shall have effect as if section 4 (which provides a time limit for compulsory purchase of land) and paragraph 3(3) of Schedule 3 (which makes provisions as to the giving of bonds) were omitted.

Power to acquire new rights

15.—(1) Railtrack may compulsorily acquire such easements or other rights over any land referred to in article 13 above as may be required for any purpose for which that land may be acquired under that provision, by creating them as well as by acquiring easements or other rights already in existence.

(2) Railtrack may compulsorily acquire a permanent right of access for the purpose of maintaining the authorised works along such route (limited to 5 metres in width) as it may reasonably require over the land shown numbered 18b on the deposited plans.

(10) 1981 c. 67.

(3) Railtrack may compulsorily acquire such soil nailing rights in the subsoil of the land shown numbered 2 on the deposited plans as it considers necessary or expedient in connection with the construction of the authorised works.

(4) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 2 to this Order), where Railtrack acquires a right over land under this article it shall not be required to acquire a greater interest in it.

(5) Paragraph (1) above shall be treated as also authorising acquisition of easements or other rights by a statutory utility in any case where the Secretary of State gives his consent in writing.

(6) Paragraph (5) above applies to land within the limits of deviation which is or will be required for use in relocating any apparatus which it is expedient to divert or replace in consequence of the carrying out of the works authorised by this Order; and in that paragraph “statutory utility” means a licence holder within the meaning of Part I of the Electricity Act 1989⁽¹¹⁾, a public gas transporter within the meaning of Part I of the Gas Act 1986⁽¹²⁾, a water undertaker within the meaning of the Water Industry Act 1991⁽¹³⁾, a sewerage undertaker within Part I of that Act and any local authority which is a relevant authority for the purposes of section 97 of that Act.

(7) Schedule 2 to this Order shall have effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right.

(8) In this article “soil nailing rights” means rights to insert soil nails into the subsoil or to carry out other subsoil works for the purposes of strengthening and stabilising the railway cutting.

(9) References in this article to the subsoil of land are references to the subsoil lying more than one metre beneath the level of the surface of the land; and for this purpose “the level of the surface of the land” means—

- (a) in the case of any land on which a building is erected, the level of the surface of the ground adjoining the building; or
- (b) in any other case, ground surface level.

Temporary possession of land

Temporary use of land for construction of works

16.—(1) Railtrack may, in connection with the carrying out of the authorised works—

- (a) enter upon and take temporary possession of the land specified in columns (1) and (2) of Schedule 3 to this Order for the purpose specified in relation to that land in column (3) of that Schedule relating to the authorised work so specified in column (4) of that Schedule,
- (b) remove any buildings and vegetation from that land, and
- (c) construct temporary works (including the provision of means of access) and buildings on the land.

(2) Not less than 14 days before entering upon and taking temporary possession of land under this article Railtrack shall serve notice of the intended entry on the owners and occupiers of the land.

(3) Railtrack may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the work specified in relation to that land in column (4) of Schedule 3 to this Order.

⁽¹¹⁾ 1989 c. 29.

⁽¹²⁾ 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45).

⁽¹³⁾ 1991 c. 56.

(4) Before giving up possession of land of which temporary possession has been taken under this article, Railtrack shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but Railtrack shall not be required to replace a building removed under this article.

(5) Railtrack shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5) above, or as to the amount of the compensation, shall be determined under Part I of the 1961 Act.

(7) Without prejudice to article 30 below, nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5) above.

(8) The powers of compulsory acquisition of land conferred by this Order shall not apply in relation to the land referred to in paragraph (1) above except that Railtrack shall not be precluded from acquiring new rights under paragraph (2) of article 15 above over the land referred to in that paragraph.

(9) Where Railtrack takes possession of land under this article, it shall not be required to acquire the land or any interest in it.

(10) In this article "building" includes structure or any other erection.

Compensation

Disregard of certain interests and improvements

17.—(1) In assessing the compensation (if any) payable to any person on the acquisition from him of any land under this Order, the tribunal shall not take into account—

- (a) any interest in land, or
- (b) any enhancement of the value of any interest in land by reason of any building erected, works executed or improvement or alteration made on relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the execution of the works or the making of the improvement or alteration was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(2) In paragraph (1) above "relevant land" means the land acquired from the person concerned or any other land with which he is, or was at the time when the building was erected, the works executed or the improvement or alteration made, directly or indirectly concerned.

Supplementary

Acquisition of part only of certain properties

18.—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 14 above) in any case where—

- (a) a notice to treat is served on a person ("the owner") under the 1965 Act (as so applied) in respect of land forming only part of a house, building or factory or of land consisting of a house with a park or garden ("the land subject to the notice to treat"); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on Railtrack a counter-notice objecting to the sale of the land subject to the notice to treat and stating that he is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner shall be required to sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner shall be required to sell only the land subject to the notice to treat shall, unless Railtrack agrees to take the land subject to the counter-notice, be referred to the tribunal.

(5) If on such a reference the tribunal determine that the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice, or
- (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner shall be required to sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determine that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice, or
- (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat shall be deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determine that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice, but
- (b) the material detriment is confined to a part of the land subject to the counter notice,

the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which Railtrack is authorised to acquire compulsorily under this Order.

(8) If Railtrack agrees to take the land subject to the counter-notice, or if the tribunal determine that—

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house, and
- (b) that the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which Railtrack is authorised to acquire compulsorily under this Order.

(9) In any case where by virtue of a determination by the tribunal under this article a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, Railtrack may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and if it does so shall pay to the owner compensation for any loss or expense occasioned to him by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or factory or of land consisting of a house with a park or garden, Railtrack shall pay him compensation for any loss sustained by him due to the severance of that part in addition to the value of the interest acquired.

Extinction or suspension of private rights of way

19.—(1) All private rights of way over land subject to compulsory acquisition under this Order shall be extinguished—

- (a) as from the acquisition of the land by Railtrack, whether compulsorily or by agreement, or
- (b) on the entry on the land by Railtrack under section 11(1) of the 1965 Act,

whichever is sooner.

(2) All private rights of way over land of which Railtrack takes temporary possession under article 16 above shall be suspended and unenforceable for as long as Railtrack remains in lawful possession of the land.

(3) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part I of the 1961 Act.

(4) This article does not apply in relation to any right of way to which section 271 or 272 of the Town and Country Planning Act 1990⁽¹⁴⁾ (extinguishment of rights of statutory undertakers etc.) applies.

Time limit for exercise of power of acquisition

20.—(1) The powers conferred by this Order to acquire land or rights over land compulsorily, and the power conferred by article 16 above to enter upon and take temporary possession of land, shall cease at the end of the period of one year beginning on the day on which this Order comes into force.

(2) Paragraph (1) above shall not prevent Railtrack remaining in possession of land in accordance with article 16 above after the end of that period, if the land was entered and possession of it was taken before the end of that period.

PART IV

MISCELLANEOUS AND GENERAL

Noise

Control of construction sites: appeals

21. Sections 60 (control of noise on construction sites) and 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974⁽¹⁵⁾ shall have effect, in relation to works carried out in exercise of the powers conferred by this Order, as if in subsection (7) of each section (appeal against failure to give consent or the giving of qualified consent) for the words “a magistrates' court” there were substituted the words “the Secretary of State”.

(14) 1990 c. 8.

(15) 1974 c. 40.

Defence to proceedings in respect of statutory nuisance

22.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990⁽¹⁶⁾ (summary proceedings by person aggrieved by statutory nuisances) 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 shall 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 Railtrack for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works; and
- (b) 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 of the Control of Pollution Act 1974 or a consent given under section 61 or 65 of that Act.

(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),

shall not apply where the consent relates to the use of premises by Railtrack for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works.

Miscellaneous

Planning permission: supplementary matters

23.—(1) Planning permission which is deemed by a direction under section 90(2A) of the Town and Country Planning Act 1990 to be granted in relation to works authorised by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of that Act (cases in which land is to be treated as operational land for the purposes of that Act).

(2) In relation to the application of paragraph (3)(c) of the Schedule of the Form of Tree Preservation Order set out in the Second Schedule to the Town and Country Planning (Tree Preservation Order) Regulations 1969⁽¹⁷⁾ as incorporated in any tree preservation order, any direction under section 90(2A) of the Town and Country Planning Act 1990 deeming planning permission to be granted in relation to works authorised by this Order shall be treated as deeming the permission to have been granted on application made under Part III of that Act for the purposes of that Part.

Saving for regulated rights etc.

24. Nothing in this Order shall affect any estate, right or interest granted by Railtrack in respect of a railway facility which is subject to an access contract within the meaning of Part I of the Railways Act 1993⁽¹⁸⁾.

Statutory undertakers etc.

25. The provisions of Schedule 4 to this Order shall have effect.

⁽¹⁶⁾ 1990 c. 43.

⁽¹⁷⁾ S.I. 1969/17.

⁽¹⁸⁾ 1993 c. 43.

Protective provisions

26. The provisions of Schedule 5 to this Order shall have effect.

Certification of plans etc.

27. Railtrack 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, respectively, of the book of reference, deposited sections and deposited plans, referred to in this Order; and a document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Maintenance of approved works etc.

28.—(1) Where pursuant to regulations made under section 41 of the Transport and Works Act 1992 (approval of works, plant and equipment) approval has been obtained from the Health and Safety Executive with respect to any works, plant or equipment (including vehicles) forming part of the railways authorised by this Order, such works, plant and equipment shall not be used in a state or condition other than that in which they were at the time that the approval was given unless any change thereto does not materially impair the safe operation of the railways so authorised.

(2) If without reasonable cause the provisions of paragraph (1) above are contravened, Railtrack shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) No proceedings shall be instituted in England and Wales in respect of an offence under this article except by or with the consent of the Health and Safety Executive or the Director of Public Prosecutions.

Service of notices

29.—(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(19) 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 authorised 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.

(19) 1978 c. 30.

No double recovery

30. 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

31. 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 of the Institution of Civil Engineers.

Signed by authority of the Secretary of State

Ellis Harvey
Head of the Transport and Works Act Processing
Unit,
Department for Transport, Local Government
and the Regions

27th June 2001