
STATUTORY INSTRUMENTS

2002 No. 1064

The Heathrow Express Railway Extension Order 2002

PART IV

MISCELLANEOUS AND GENERAL

Power to operate and use railways

21. The undertaker may operate and use the scheduled works and other authorised works as a system, or part of a system, of transport for the carriage of passengers and goods.

London Transport Users' Committee

22.—(1) On the opening of the authorised works for passenger services it shall be the duty of the London Transport Users' Committee to consider and, where it appears to them to be desirable, make recommendations with respect to any matter affecting the services and facilities provided on the lines comprising those works or at the station—

- (a) which has been the subject of representations (other than representations appearing to the committee to be frivolous) made to the committee by or on behalf of users of those services or facilities, or
- (b) which has been referred to the committee by the Secretary of State or by the undertaker; or
- (c) which appears to the committee to be a matter to which consideration ought to be given;

and copies of the minutes, conclusions and recommendations of the committee shall be sent to the undertaker.

(2) Nothing in paragraph (1) above shall entitle the London Transport Users' Committee to consider the charges made for any service or facility, or to consider any question relating to the discontinuance or reduction of railway services.

(3) If the undertaker proposes the discontinuance of all railway passenger services on the lines comprising those works or at or from the station, it shall, not less than six months before carrying the proposal into effect, give to the Secretary of State notice of that proposal.

(4) Upon receipt of a notice served under paragraph (3) above, the Secretary of State shall consider, having consulted the London Transport Users' Committee and such other persons or bodies as he may think fit, what measures, if any he should in all circumstances take.

Byelaws relating to railway

23.—(1) In this article and in article 24 below “the railway” means the railway comprised in the scheduled works and “railway premises” means premises of the undertaker used for or in connection with the operation of the railway.

(2) The undertaker may make byelaws regulating the use and working of, and travel on, the railway, the maintenance of order on that railway and railway premises, including the station authorised by article 4(4) above, the approaches to that station and any escalators, lifts, stairs and

other communications constructed by it, and the conduct of all persons, including its officers and servants, while on those premises.

(3) Without prejudice to the generality of paragraph (2) above byelaws under this article may contain provisions—

- (a) with respect to tickets issued for entry on railway premises or travel on the railway or escalators, lifts, stairs and other communications, the payment of fares and charges and the evasion of payment of fares or charges;
- (b) with respect to interference with, or obstruction of, the railway or escalators, lifts, stairs and other communications;
- (c) with respect to the use of tobacco or other substances in railway vehicles and elsewhere and the prevention of nuisances;
- (d) for regulating the passage of bicycles and other vehicles on footways and other premises controlled by the undertaker and intended for the use of persons on foot;
- (e) for the safe custody and redelivery or disposal of property found in railway premises or vehicles of the undertaker or elsewhere upon the railway, and for fixing the charges which may be made in respect thereof.

(4) Any byelaws made under this article may provide that any person contravening them shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale for each offence.

(5) Without prejudice to the taking of proceedings under paragraph (4) above, if the contravention of any byelaw having effect under this section is attended with danger or annoyance to the public, or hindrance to the undertaker in the lawful conduct of the railway, it shall be lawful for the undertaker summarily to take action to obviate or remove the danger, annoyance or hindrance.

(6) The provisions of subsections (5) to (12) of section 67 of the Transport Act 1962(1) shall apply to any byelaws made by the undertaker under this article as if for references to the Board, or the board in question, there were substituted references to the undertaker.

Power for undertaker to contract for police services

24.—(1) The undertaker may from time to time make agreements with the chief officer of police and a police authority for the employment by the undertaker of any members of the police establishment of that police authority for police duty within railway premises or elsewhere upon the railway.

(2) Any such agreement may contain such terms and conditions and provide for such payment or consideration as the undertaker shall agree with the police authority.

(3) In this article—

- (a) “police authority” includes a police authority within the meaning of the Police Act 1996(2), and the Strategic Rail Authority;
- (b) “railway premises” means any building occupied by the undertaker for the purposes of its railway undertaking.

Power to transfer, lease etc. undertaking

25.—(1) In this article, unless the context otherwise requires—

“functions” includes powers, duties and obligations;

(1) 1962 c. 46.

(2) 1996 c. 16.

“transferee” means a person to whom all or any of the property or functions of the undertaker have been transferred by virtue of a transfer agreement; and

“transfer agreement” means an agreement entered into under paragraph (2) or (3) below.

(2) The undertaker may enter into and carry into effect an agreement to sell, lease, charge or otherwise dispose of, on such terms and conditions as it thinks fit, the whole or any part of the undertaking consisting of the authorised works and any land held for the purpose of, or in connection with, those works.

(3) Without prejudice to the generality of paragraph (2) above, the undertaker may enter into and carry into effect an agreement with any other person with respect to the transfer to and vesting in that other person of all or any of its functions under this Order.

(4) A transfer agreement may be entered into so as to transfer and vest such property and functions in any other person for such period as may be specified in that agreement or for so long as the agreement remains in force and where such an agreement is entered into references in this Order (except in the definition of “the participants” in paragraph 1(2) of Schedule 4 thereto) to the undertaker shall, to the extent that the agreement so provides, have effect as references to the transferee.

(5) Without prejudice to the powers of the undertaker to terminate or vary a transfer agreement, a transfer agreement may specify circumstances in which that agreement shall cease to have effect before the expiry of any period specified in any such agreement.

(6) A transfer agreement may include such supplementary, incidental, transitional and consequential provisions as the undertaker may consider to be necessary or expedient.

(7) Upon expiry of any period specified in a transfer agreement in accordance with paragraph (4) above, or upon a transfer agreement being terminated or otherwise ceasing to have effect, the functions and property of the undertaker which were transferred by that agreement shall, by virtue of this paragraph but subject to the effect of any further transfer agreement entered into by the undertaker, be revested in the undertaker, but such revesting shall not make the undertaker subject to any of the liabilities of the transferee other than any continuing duties imposed by this Order.

(8) Notwithstanding anything in any transfer agreement, any duty arising under this Order to complete the construction of, or to maintain or operate, any works in respect of which the undertaker’s functions are transferred by a transfer agreement, together with such rights and property as are required for the discharge of that duty, shall revert to the undertaker in the event of the abandonment of those works or in the event that the works are not completed within 10 years of the commencement of construction of those works.

(9) Unless the transfer agreement otherwise provides, if a duty to complete the construction of, to maintain or to operate any works reverts to the undertaker under paragraph (8) above, the transfer agreement shall terminate and all the functions and property of the undertaker which were transferred by that agreement shall be revested in the undertaker in accordance with paragraph (7) above.

(10) Within 21 days of the completion of any transfer agreement the undertaker shall serve notice on the Secretary of State stating the name and address of the transferee and the date when the transfer is to take effect.

(11) Within 21 days of the revesting in the undertaker of any property or functions pursuant to paragraph (10) or (11) or the reversion to the undertaker of any duty, rights or property pursuant to paragraph (8) above, the undertaker shall serve notice on the Secretary of State, providing him with particulars of the revesting or reversion concerned.

(12) If the undertaker fails, without reasonable excuse, to comply with the obligation imposed by paragraph (10) or (11) above it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(13) A transfer agreement may confer on the transferee the power of the undertaker to enter into a transfer agreement under this article in respect of any functions or property transferred to the transferee, and accordingly, the provisions of this article shall in their application to the exercise of such power by such transferee have effect as if any reference to the undertaker in those provisions (except paragraphs (8) and (9) above and paragraph (14) below) were a reference to the transferee.

(14) The inclusion in any transfer agreement of the power to enter into a transfer agreement or anything done in pursuance of such a power shall not affect the reversion to the undertaker in the circumstances referred to in paragraphs (8) and (9) above of any functions or property of the undertaker.

Maintenance of approved works, etc.

26.—(1) Where pursuant to the Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994⁽³⁾ 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, the undertaker 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.

Disclosure of confidential information

27. A person who—

- (a) enters a factory, workshop or workplace in pursuance of the provisions of article 7 or 8 above; and
- (b) discloses to any person any information obtained by him relating to any manufacturing process or trade secret;

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale unless the disclosure is made in the course of performing his duty in connection with the purposes for which he was authorised to enter the land.

Statutory undertakers, etc.

28. The provisions of Schedule 3 to this Order shall have effect.

Fuel pipelines and facilities

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

Certification of plans, etc.

30. The undertaker 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, sections and plans

(3) [S.I. 1994/157](#).

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.

Service of notices

31.—(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⁽⁴⁾ 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.

No double recovery

32. 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.

Repeal

33. Subsection (3) of section 43 of the Heathrow Express Railway Act 1991 is hereby repealed.

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 of the Institution of Civil Engineers.

(4) 1978 c. 30.