
STATUTORY INSTRUMENTS

2004 No. 389

TRANSPORT AND WORKS, ENGLAND
TRANSPORT, ENGLAND

The Network Rail (West Coast Main Line) Order 2004

Made - - - - *12th February 2004*

Coming into force - - *4th March 2004*

Whereas an application has been made to the Secretary of State in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2000⁽¹⁾ made under sections 6, 6A, 7(3)(b) and (c) and (4), and 10 of the Transport and Works Act 1992⁽²⁾ (“the 1992 Act”), for an Order under sections 1 and 5 of the 1992 Act;

And whereas the Secretary of State caused an inquiry to be held for the purposes of the application pursuant to section 11 of the 1992 Act;

And whereas the Secretary of State, having considered the objections made and not withdrawn and the report of the person who held the inquiry, has determined to make an Order giving effect to the proposals comprised in the application with modifications which in his opinion do not make any substantial change in the proposals;

And whereas the Secretary of State is satisfied that the provision of an alternative right of way for each of the streets mentioned in Part II of Schedule 6 to this Order is not required;

And whereas notice of the Secretary of State’s determination was published in the London Gazette on 11th February 2004;

Now, therefore, the Secretary of State, in exercise of the powers conferred by sections 1 and 5 of, and paragraphs 1 to 5, 7, 8, 10, 11, 16 and 17 of Schedule 1 to, the 1992 Act and of all other powers enabling him in that behalf, hereby makes the following Order:

(1) S.I. 2000/2190.
(2) 1992 c. 42.

PART I

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Network Rail (West Coast Main Line) Order 2004 and shall come into force on 4th March 2004.

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(3);

“the 1965 Act” means the Compulsory Purchase Act 1965(4);

“the 2003 Act” means the Communications Act 2003(5);

“the Applications Rules” means the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2000;

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

“the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

“bridleway”, “carriageway”, “footpath”, “footway”, “highway” and “highway authority” have the same meaning as in the Highways Act 1980(6);

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system shall be construed in accordance with paragraph 1(3A) of that code;

“the deposited plans” means the composite plans prepared in pursuance of rule 12(1) and (5) of the Applications Rules and 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 12(5);

“the deposited sections” means the sections certified by the Secretary of State as the deposited sections for the purposes of this Order;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(7);

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the Secretary of State or a Northern Ireland department is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;

(3) 1961 c. 33.

(4) 1965 c. 56.

(5) 2003 c. 21.

(6) 1980 c. 66.

(7) See section 106.

“electronic communications network” and “electronic communications service” each has the same meaning as in the 2003 Act⁽⁸⁾;

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

“former PTO” means a person—

- (a) who is a provider of a public electronic communications network or a public electronic communications service which, immediately before the date on which the repeal by the 2003 Act⁽⁹⁾ of section 7 of the Telecommunications Act 1984⁽¹⁰⁾ comes into force, was designated as a public telecommunication system under section 9 of that Act; and
- (b) who, immediately before that date, was authorised to provide that network or service by a licence to which section 8 of that Act applied;

“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;

“Network Rail” means Network Rail Infrastructure Limited;

“operator”, in relation to an electronic communications code network, means—

- (a) the electronic communications code operator providing that network; or
- (b) the Secretary of State or a Northern Ireland department, to the extent that they are providing or proposing to provide that network;

“the Order limits” means any of the limits of deviation, or the limits of land to be acquired or used, shown on the deposited plans;

“owner”, in relation to land, means, unless the context otherwise requires, 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;

“provide” and cognate expressions, in relation to an electronic communications network, an electronic communications service or associated facilities, are to be construed in accordance with section 32(4) of the 2003 Act;

“public electronic communications network” and “public electronic communications service” each has the same meaning as in Chapter 1 of Part 2 of the 2003 Act⁽¹¹⁾;

“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⁽¹²⁾;

“the tribunal” means the Lands Tribunal; and

“working site” includes construction access.

(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.

⁽⁸⁾ See section 32.

⁽⁹⁾ See section 406(7) and Schedule 19.

⁽¹⁰⁾ 1984 c. 12.

⁽¹¹⁾ See section 151.

⁽¹²⁾ 1991 c. 22.

(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 and distances between points on a railway shall be taken to be measured along the railway.

(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.

(5) Any reference in this Order to a point identified by a letter and number shall be construed as a reference to the point so lettered and numbered on the deposited plans.

(6) References in this Order to reference points shall be construed as references to Ordnance Survey National Grid reference points.

(7) References in this Order to highways lettered FP or BR are references respectively to footpaths or bridleways.

Incorporation of Railways Clauses Consolidation Act 1845

3.—(1) The following provisions of the Railways Clauses Consolidation Act 1845**(13)** shall be incorporated in this Order—

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

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**(14)**;

section 145 (recovery of penalties); and

section 154 (transient offenders).

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

“the company” means Network Rail;

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

“the railway” means any railway authorised to be constructed by this Order and, except where the context otherwise requires, any other authorised works; and

“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 for 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.

(13) 1845 c. 20.

(14) 1923 c. 20.

PART II

WORKS PROVISIONS

Principal Powers

Power to construct and maintain certain works

- 4.—(1) Network Rail may construct and maintain the scheduled works.
- (2) Subject to article 6, 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.
- (3) Network Rail may on the land specified in columns (1) and (2) of Schedule 2 to this Order carry out and maintain any works specified in relation to that land in column (3) of that Schedule with all necessary works and conveniences in connection therewith.

Power to construct and maintain ancillary works

- 5.—(1) Subject to paragraph (3), Network Rail may 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 authorised works, namely—
- (a) construct and maintain such offices and other buildings, yards, machinery, plant, apparatus and other works and conveniences as Network Rail thinks fit;
 - (b) make, provide and maintain all such approaches, bridges, subways, interchanges, roundabouts, turning places, lifts, stairs, escalators, ramps, passages, means of access, shafts and stagings as Network Rail thinks fit;
 - (c) make junctions and communications (including the provision of steps or ramps for the use of persons on foot) with any highway or access way intersected or interfered with by, or contiguous to, any of those works, and widen or alter any highway or access way for the purpose of connecting it with any of those works or another highway, or of crossing under or over the highway or access way;
 - (d) construct, provide and maintain all such embankments, aprons, abutments, retaining walls, wing walls, culverts and other works as may be necessary or convenient;
 - (e) alter or remove any structure erected upon any highway or adjoining land;
 - (f) alter the position of apparatus, including mains, sewers, drains and cables; and
 - (g) alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses.
- (2) Subject to paragraph (3), Network Rail may carry out and maintain such other works (of whatever nature) as may be necessary or expedient for the purposes of, in connection with or in consequence of, the construction of the authorised works.
- (3) Paragraphs (1) and (2)—
- (a) shall only authorise the carrying out or maintenance of works outside the limits of deviation for the scheduled works if the works are carried out on land specified in columns (1) and (2) of Schedule 2 to this Order for the purpose specified in relation to that land in column (3) of that Schedule; and
 - (b) shall not authorise the carrying out or maintenance of works to alter the course of, or otherwise interfere with, navigable rivers or watercourses.

(4) Any power authorised by paragraph (1)(c) which affects a highway shall not be exercised without the written consent of the relevant highway authority, but such consent shall not be unreasonably withheld.

(5) Network Rail 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 of the scheduled works, Network Rail may—

- (a) deviate laterally from the lines or situations shown on the deposited plans within the limits of deviation for that work shown on those plans; and
- (b) deviate vertically from the levels shown on the deposited sections—
 - (i) in the case of Work Nos. 2A, 3, 3A, 3B, 4, 6, 7, 7A, 8, 9, 9A, 10, 10A, 10B, 10C, 11, 12, 13A, 13B and 14 to any extent not exceeding 0.75 metres upwards or downwards; and
 - (ii) in the case of any of the remaining works, to any extent not exceeding 3 metres upwards or downwards.

(2) In constructing or maintaining the temporary vehicular bridges referred to in article 28(2), Network Rail may deviate vertically from the levels shown on the deposited sections—

- (a) in the case of the bridge referred to in article 28(2)(a), to any extent not exceeding 0.75 metres upwards or downwards; and
- (b) in the case of the bridge referred to in article 28(2)(b), to any extent not exceeding 0.75 metres upwards.

Level Crossings

Replacement of road level crossing

7.—(1) Subject to paragraph (3), the level crossing specified in columns (1) and (2) of Schedule 3 to this Order shall be stopped up and discontinued.

(2) Subject to paragraph (3) and paragraph 2 of Schedule 12 to this Order, upon the stopping up and discontinuance of the level crossing referred to in paragraph (1), any right of way over the part of the street specified in relation to it in column (3) of Schedule 3 to this Order shall be extinguished.

(3) Paragraphs (1) and (2) shall not take effect with respect to the level crossing until the accommodation works specified in relation to it in column (4) of Schedule 3 to this Order have been completed to the reasonable satisfaction of the street authority and are open for use.

(4) Any person who suffers loss by the extinguishment 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.

Replacement of footpath level crossings

8.—(1) Subject to paragraph (3), each specified footpath shall be stopped up and discontinued.

(2) Subject to paragraph (3) and paragraph 2 of Schedule 12 to this Order, upon the stopping up and discontinuance of a specified footpath, any right of way over it shall be extinguished.

(3) Paragraphs (1) and (2) shall not take effect with respect to a footpath specified in columns (1) and (3) of Schedule 4 to this Order until the footpath specified in relation to it in column (4) of that Schedule is open for use in accordance with the reasonable requirements of the highway authority.

(4) In providing the footpaths specified in column (4) of Schedule 4 to this Order, Network Rail may within the Order limits erect barriers and signs and carry out or provide any ancillary works or conveniences, subject to the agreement of the highway authority which agreement shall not be unreasonably withheld.

(5) Any person who suffers loss by the extinguishment 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.

(6) In this article “specified footpath” means any of the footpaths or lengths of footpath specified in columns (1) and (3) of Schedule 4 to this Order which are crossed on the level by Network Rail’s railway at the level crossings specified in column (2) of that Schedule.

Accommodation crossings

9.—(1) Subject to paragraphs (3) and (4) and notwithstanding anything in section 68 of the Railways Clauses Consolidation Act 1845 as incorporated in the Trent Valley Railway Act 1845(15) or any other enactment or instrument, all private rights of way (if any) across the West Coast Main Line railway by means of the accommodation facilities in the district of Lichfield, in the county of Staffordshire, specified in paragraph (2), shall be extinguished.

(2) The accommodation facilities referred to in paragraph (1) are—

- (a) Comberford Level Crossing, between points C1 and C2;
- (b) Tamborn Park Farm Underbridge 88, between points C3 and C4; and
- (c) Overbridge 90, between points C5 and C6.

(3) Paragraph (1) shall not take effect with respect to the extinguishment of the private rights of way by means of the level crossing specified in paragraph (2)(a) until the alternative accommodation access has been provided.

(4) Paragraph (1) shall not take effect with respect to the extinguishment of the accommodation crossings specified in paragraph (2)(b) and (c) until Work Nos. 9 and 9A have been completed.

(5) Any person who suffers loss by the extinguishment 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.

(6) In this article, “alternative accommodation access” means the access to be provided, specified in column (3) of Schedule 2 to this Order, on the land numbered 248 on the deposited plans in the borough of Tamworth, in the county of Staffordshire and on the land numbered 2, 5 and 8 in the district of Lichfield.

Streets

Power to execute street works

10.—(1) Network Rail may, for the purposes of the authorised works, enter upon so much of any of the streets specified in Schedule 5 to this Order as is within the Order limits and may—

- (a) place apparatus in the street,
- (b) maintain apparatus in the street or change its position, and

- (c) execute any works required for or incidental to any works referred to in sub-paragraphs (a) and (b) (including, in particular, breaking up or opening the street, or any sewer, drain or tunnel under it, or tunnelling or boring under the street).
- (2) This article is subject to paragraph 3 of Schedule 12 to this Order.
- (3) In this article “apparatus” has the same meaning as in Part III of the Street Works Act.

Permanent stopping up of streets and extinguishment of rights

11.—(1) Subject to the provisions of this article, Network Rail may, in connection with the construction of the authorised works, permanently stop up each of the streets specified in columns (1) and (2) of Parts I and II of Schedule 6 to this Order to the extent specified in column (3) of those Parts of that Schedule.

(2) Subject to paragraph (5), no street specified in columns (1) and (2) of Part I of Schedule 6 to this Order shall be wholly or partly stopped up under this article unless—

- (a) the new street to be substituted for it, and which is specified in relation to it in column (4) of that Part of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route, which has been approved by the street authority (such approval not to be unreasonably withheld), is available between the commencement and termination points of the street to be stopped up pending completion of the new street in accordance with sub-paragraph (a).

(3) No street specified in columns (1) and (2) of Part II of Schedule 6 to this Order shall be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the relevant land; and for this purpose “relevant land” means any land which abuts on either side of the street to be stopped up.

(4) The condition referred to in paragraph (3) is that—

- (a) Network Rail is in possession of the land,
- (b) there is no right of access to the land from the street concerned,
- (c) there is reasonably convenient access to the land otherwise than from the street concerned, or
- (d) the owners and occupiers of the land have agreed to the stopping up.

(5) In the case of the stopping up of footpath FP 1R/2293 between points F9 and F10—

- (a) paragraph (2) shall not apply, and
- (b) the new street to be substituted for that part of that footpath which is specified in relation to it in column (4) of Part I of Schedule 6 shall be completed to the reasonable satisfaction of the street authority as soon as reasonably practicable after the completion of the relevant part of Work Nos. 1 and 2.

(6) Where a street has been permanently stopped up under this article—

- (a) all rights of way over or along the street so stopped up shall be extinguished (other than, in the case of Ludgate/Tennyson Avenue between points F1/S1 and F2/S2 and Roman Way between points F18/S3 and S4, in the borough of Tamworth, a right of way on foot); and
- (b) Network Rail may, without making any payment but subject to sections 77 to 85E of, and Schedules 1 to 3 to, the Railways Clauses Consolidation Act 1845 (which relate to minerals under railways) appropriate and use for the purposes of its railway undertaking so much of the site of the street as is bounded on both sides by land owned by Network Rail.

(7) Any person who suffers loss by the extinguishment 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.

(8) This Article is subject to paragraph 2 of Schedule 12 to this Order and is without prejudice to articles 7 and 8.

Temporary stopping up of streets

12.—(1) Network Rail, during and for the purposes of the execution of the authorised works, may temporarily stop up, alter or divert any street and may for any reasonable time—

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

(2) Without prejudice to the generality of paragraph (1), Network Rail may use any street stopped up under the powers of this article as a temporary working site.

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

(4) Without prejudice to the generality of paragraph (1), Network Rail may exercise the powers conferred by this article in relation to the streets specified in columns (1) and (2) of Schedule 7 to this Order within the Order limits.

(5) Network Rail shall not exercise the powers conferred by this article—

- (a) in relation to any street specified as mentioned in paragraph (4) without first consulting the street authority; and
- (b) in relation to any other street without the consent of the street authority, but such consent shall not be unreasonably withheld.

(6) The provisions of the Street Works Act mentioned in paragraph (7), 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 a street by Network Rail under the powers conferred by this article where no street works are executed in that street as they would apply if the stopping up, alteration or diversion were occasioned by street works executed in that street by Network Rail.

(7) The provisions of the Street Works Act referred to in paragraph (6) 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.

(8) 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 parking restrictions

13.—(1) Subject to the provisions of this article, Network Rail may prohibit or restrict the waiting or the loading or unloading of vehicles on the specified roads for the purpose of enabling or facilitating access over those roads by vehicles used in the construction of Work Nos. 1 and 2.

(2) A prohibition or restriction under paragraph (1) shall apply for such period of time as shall be determined by Network Rail to be necessary for the purposes of the construction of Work Nos. 1 and 2 and may apply at all times during that period or at such times, on such days or during such periods as may be determined by Network Rail.

(3) Network Rail shall not exercise the powers of this article unless it has—

- (a) consulted with the traffic authority in whose area the roads are situated;
- (b) given not less than 12 weeks' notice in writing of its intention so to do to the chief officer of police and to the traffic authority; and
- (c) advertised its intention in such manner as the traffic authority may, within 28 days of its receipt of notice of the undertakers' intention, specify in writing.

(4) Any prohibition or restriction made by Network Rail under paragraph (1) shall have effect as if duly made by the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act.

(5) In this article—

- (a) “the 1984 Act” means the Road Traffic Regulation Act 1984⁽¹⁶⁾;
- (b) “specified roads” means Cherry Street and Cross Street, in the borough of Tamworth, in the county of Staffordshire; and
- (c) expressions used in this article and the 1984 Act shall have the same meaning as in that Act.

Access to works

14. Network Rail may, for the purposes of the authorised works—

- (a) form and lay out means of access, or improve existing means of access, to the streets specified in columns (1) and (2) of Schedule 8 to this Order at or about the points marked “A”; and
- (b) with the approval of the highway authority (such approval not to be unreasonably withheld), form and lay out means of access, or improve existing means of access, at such other locations within the Order limits as Network Rail reasonably requires for the purposes of the authorised works.

Construction and maintenance of new or altered streets

15.—(1) Any street to be constructed under this Order shall be completed to the reasonable satisfaction of the highway authority and shall, unless otherwise agreed, be maintained by and at the expense of Network Rail for a period of 24 months from its completion and at the expiry of that period—

- (a) in the case of a highway, by and at the expense of the highway authority; and
- (b) in the case of a new private access, by and at the expense of the owners and occupiers.

(2) Where a street is altered or diverted under this Order, the altered or diverted part of the street shall when completed to the reasonable satisfaction of the street authority, unless otherwise agreed, be maintained by and at the expense of Network Rail for a period of 24 months from its completion and at the expiry of that period by and at the expense of the street authority.

(16) 1984 c. 27.

(3) Paragraphs (1) and (2) do not apply in relation to the structure of any bridge or tunnel carrying a street over or under any railway of Network Rail.

(4) Nothing in this article shall prejudice the operation of section 87 of the Street Works Act (prospectively maintainable highways); and Network Rail shall not by reason of any duty under this article to maintain a street be taken to be the street authority in relation to that street for the purposes of Part III of that Act.

(5) Nothing in this article shall have effect in relation to street works as respects which the provisions of Part III of the Street Works Act apply.

Construction of bridges and tunnels

16. Any bridge or tunnel to be constructed or reconstructed under this Order for carrying a highway over or under a railway shall be constructed or reconstructed in accordance with plans and specifications approved by the highway authority, but such approval shall not be unreasonably withheld.

Agreements with street authorities

17.—(1) A street authority and Network Rail may enter into agreements with respect to—

- (a) the construction of any new street (including any structure carrying the street over or under a railway) under the powers conferred by this Order;
 - (b) the maintenance of the structure of any bridge or tunnel carrying a street over or under a railway;
 - (c) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
 - (d) the execution in the street of any of the works referred to in article 10(1).
- (2) Such an agreement may, without prejudice to the generality of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question; and
 - (b) contain such terms as to payment and otherwise as the parties consider appropriate.

Supplemental powers

Temporary closure of part of Coventry Canal

18.—(1) In this article “the waterway” means so much of the Coventry Canal and the towing path, numbered 191 to 195 on the deposited plans, at Huddlesford in the district of Lichfield in the county of Staffordshire as lies within the Order limits.

(2) Network Rail, during and for the purpose of the construction of Work Nos. 1, 2 and 12 and the bridge referred to in article 28(2), may temporarily close and de-water any part of the waterway and divert barges and other boats from any part of the waterway.

(3) During the period of the closure referred to in paragraph (2), all rights of navigation along, and obligations of the British Waterways Board to maintain for navigation, the waterway or part thereof so closed shall be suspended and unenforceable against the British Waterways Board.

(4) Any person who suffers loss by the suspension of any right under this article shall be entitled to be paid by Network Rail compensation, to be determined in the case of dispute by the tribunal.

Discharge of water

19.—(1) Network Rail 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) Network Rail 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) Network Rail 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) Network Rail 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) Network Rail 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(17).

(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.

Protective works to buildings

20.—(1) Subject to the following provisions of this article, Network Rail may at its own expense and from time to time carry out such protective works to any building within the Order limits and lying within 35 metres of any of the authorised works as Network Rail considers to be necessary or expedient.

(2) Protective 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 for use.

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

(4) For the purpose of carrying out protective works under this article to a building Network Rail may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land belonging to it; and

(17) 1991 c. 57.

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

Network Rail 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 falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where notice is served under paragraph (5)(a), (c) or (d), 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 protective works or to enter the building or land to be referred to arbitration under article 44.

(7) Network Rail 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) protective 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 protective works are inadequate to protect the building against damage caused by the construction or operation of that part of the works,

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

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

(10) Any compensation payable under paragraph (7) or (8) 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;
- (b) any reference to a building within a specified distance of a work includes—
 - (i) in the case of a work under the surface of the ground, a reference to any building within the specified distance of the point on the surface below which the work is situated; and
 - (ii) where a work has not commenced, a reference to a building within the specified distance of the proposed site of the work; and
- (c) “protective 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

- 21.**—(1) Network Rail 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), 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), 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); and
 - (e) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (d).
- (2) No land may be entered, or equipment placed or left on or removed from the land under paragraph (1), 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 Network Rail—
- (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) Network Rail 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(18).

PART III

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

- 22.**—(1) Subject to paragraph (2), Network Rail may acquire compulsorily—
- (a) 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
 - (b) so much of the land specified in columns (1) and (2) of Schedule 2 to this Order as may be required for the purpose specified in relation to that land in column (3) of that Schedule,
- and may use any land so acquired for those purposes or for any other purposes connected with or ancillary to its railway undertaking.

(2) Network Rail shall not under the powers of this Order acquire compulsorily any interest in the land delineated on the deposited plans and thereon numbered—

- (a) 109b, 159b, 159c, 210, 211, 212, 213 and 214 in the borough of Tamworth and 176a, 177, 178a, 179, 203a and 203b in the district of Lichfield; and
- (b) 160, 161, 197c, 200a, 202a, 202b, 202c, 202d, 202e, 203a, 205a, 205b, 206a, 239a and 240 in the borough of Tamworth and 176c, 178d and 203d in the district of Lichfield,

except that Network Rail may enter upon and take temporary possession of the land specified in article 36(3) in accordance with that provision.

(3) Notwithstanding paragraph (2), Network Rail may, pursuant to article 24, compulsorily acquire easements or other rights over the land described in paragraph (2)(b).

(4) This article is subject to articles 26, 28(9) and 38.

Application of Part I of Compulsory Purchase Act 1965

23.—(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(19) 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—

- (a) section 4 (which provides a time limit for compulsory purchase of land) and paragraph 3(3) of Schedule 3 (which makes provision as to the giving of bonds) were omitted; and
- (b) in section 11(1) (which confers power to enter on and to take possession of land subject to a notice to treat on giving not less than 14 days' notice) for the reference to 14 days' notice there were substituted—
 - (i) in a case where the notice to treat relates only to the acquisition of subsoil or the acquisition of an easement or other right over the land, a reference to notice of one month; or
 - (ii) in any other case, a reference to notice of 3 months.

Power to acquire new rights

24.—(1) Subject to article 22(2)(a), Network Rail may compulsorily acquire such easements or other rights over any land referred to in paragraph (1)(a) or (b) of article 22 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) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 9 to this Order), where Network Rail acquires a right over land under paragraph (1) it shall not be required to acquire a greater interest in it.

(3) Schedule 9 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.

(4) In relation to land to which this paragraph applies, article 22, so far as relating to the acquisition or creation of easements or other rights by virtue of paragraph (1), shall be treated as also authorising acquisition by a statutory utility in any case where the Secretary of State gives his consent in writing.

(19) 1981 c. 67.

(5) Paragraph (4) applies to land within the Order limits 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⁽²⁰⁾, a public gas transporter within the meaning of Part I of the Gas Act 1986⁽²¹⁾, a water undertaker within the meaning of the Water Industry Act 1991⁽²²⁾, a sewerage undertaker within the meaning of Part I of that Act and any local authority which is a relevant authority for the purposes of section 97 of that Act.

Power to acquire subsoil only

25.—(1) Subject to article 22(2), Network Rail may compulsorily acquire so much of the subsoil of the land referred to in paragraph (1)(a) or (b) of article 22 as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where Network Rail acquires any part of the subsoil of land under paragraph (1) it shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) shall not prevent article 30 from applying where Network Rail acquires a cellar, vault, arch or other construction forming part of a house, building or factory.

Cases where powers of acquisition limited to soil nailing rights

26.—(1) This article applies to the land specified in Schedule 10 to this Order.

(2) In the case of land to which this article applies, Network Rail’s powers of compulsory acquisition under article 22 shall be limited to the acquisition of soil nailing rights in the subsoil of so much of the land as lies within ten metres of land owned by Network Rail.

(3) Where Network Rail acquires soil nailing rights in the subsoil of land to which this article applies, it shall not be required to acquire a greater interest in the land or an interest in any other part of it.

(4) 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.

(5) 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.

Rights under streets

27.—(1) Network Rail may enter upon and appropriate so much of the subsoil of any street within the Order limits as may be required for the purposes of the authorised works and may use the subsoil for those purposes or any other purpose connected with or ancillary to its railway undertaking.

(2) The power under paragraph (1) may be exercised in relation to a street without Network Rail being required to acquire any part of the street or any easement or right in the street.

(3) Subject to paragraph (4), any person, who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without Network Rail acquiring any part of that person’s interest in the land and who suffers loss by the exercise of that power, shall be entitled to compensation to be determined, in case of dispute, under Part I of the 1961 Act.

⁽²⁰⁾ 1989 c. 29.

⁽²¹⁾ 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45).

⁽²²⁾ 1991 c. 56.

- (4) Paragraph (2) shall not apply in relation to—
- (a) any subway or underground building, or
 - (b) any cellar, vault, arch or other construction in or on a street which forms part of a building fronting onto the street.

Temporary possession of land

Temporary use of land for construction of works

28.—(1) Subject to paragraph (13), Network Rail 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 11 to this Order for the purpose specified in relation to that land in column (3) of that Schedule relating to the works or the facilities (or any of those works or facilities) 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) Without prejudice to the generality of paragraph (1)(c), Network Rail may, in connection with the carrying out of the authorised works, construct—

- (a) a temporary vehicular bridge over the river Tame on the land numbered 22, 34 and 42 on the deposited plans in the district of Lichfield, in the county of Staffordshire; and
- (b) a temporary vehicular bridge over the Coventry Canal on the land numbered 183, 193 and 196 on the deposited plans at Huddlesford in the district of Lichfield, in the county of Staffordshire,

in accordance with the levels shown on the deposited sections but subject to the power to deviate in article 6(2).

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article Network Rail shall serve notice of the intended entry on the owners and occupiers of the land.

(4) Subject to paragraph (13), Network Rail 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 or works, or the date of the provision of the facility or facilities, specified in relation to that land in column (4) of Schedule 11 to this Order.

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

(6) Network Rail 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.

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

(8) Without prejudice to article 43, 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 (6).

(9) Subject to paragraph (10), the powers of compulsory acquisition of land conferred by this Order shall not apply in relation to the land referred to in paragraph (1).

(10) Network Rail shall not be precluded from acquiring over any part of the land referred to in paragraph (1)—

- (a) new rights under article 24, or
- (b) soil nailing rights under article 26.

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

(12) In this article “building” includes structure or any other erection.

(13) Where, in relation to land specified in columns (1) and (2) of Schedule 11 to this Order, the purpose specified in column (3) of that Schedule in relation to that land is a right of access—

- (a) references in this article to entering upon and taking possession of land shall be construed as references to using the land as an access and related expressions shall be construed accordingly; and
- (b) paragraphs (1)(b) and (c) and (4) shall not apply.

Compensation

Disregard of certain interests and improvements

29.—(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) “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

30.—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 23) 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 Network Rail 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 Network Rail 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 Network Rail is authorised to acquire compulsorily under this Order.

(8) If Network Rail 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) 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 Network Rail 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, Network Rail 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 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, Network Rail 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

31.—(1) All private rights of way over land held and used by Network Rail for the purposes of the authorised works or subject to compulsory acquisition under this Order shall be extinguished—

- (a) as from the use by Network Rail of the land for the purposes of the authorised works;
- (b) as from the acquisition of the land by Network Rail, whether compulsorily or by agreement; or
- (c) on the entry on the land by Network Rail under section 11(1) of the 1965 Act,

whichever is sooner.

(2) All private rights of way over land of which Network Rail takes temporary possession under this Order shall be suspended and unenforceable for as long as Network Rail 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⁽²³⁾ (extinguishment of rights of statutory undertakers etc.) or paragraph 2 of Schedule 12 to this Order applies.

(5) This article does not apply in relation to any private right of way over—

- (a) land specified in columns (1) and (2) of Schedule 2 to this Order, or
- (b) land specified in columns (1) and (2) of Schedule 11 to this Order,

where the purpose specified in column (3) of that Schedule in relation to that land is a right of access, except where, or to the extent that, the private right of way is inconsistent with the exercise of the right of access acquired by Network Rail under this Order.

Time limit for exercise of powers of acquisition

32.—(1) No notice to treat shall be served under Part I of the 1965 Act, as applied to the acquisition of land under article 23 after the end of the period of 5 years beginning with the day on which this Order comes into force.

(2) The power conferred by article 28 to enter upon and take temporary possession of land shall cease at the end of the period mentioned in paragraph (1); but this paragraph shall not prevent Network Rail remaining in possession of land in accordance with article 28 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

Defence to proceedings in respect of statutory nuisance

33.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990⁽²⁴⁾ (summary proceedings by persons aggrieved by statutory nuisances) in relation to a

⁽²³⁾ 1990 c. 8.

⁽²⁴⁾ 1990 c. 43.

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 Network Rail 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, or a consent given under section 61 or 65, of the Control of Pollution Act 1974⁽²⁵⁾.
- (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 Network Rail for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works.

Miscellaneous and supplementary

Certain land to be treated as operational land

34. 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).

Maintenance of approved works etc.

35.—(1) Where pursuant to regulations⁽²⁶⁾ made under section 41 of the 1992 Act (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) are contravened, Network Rail 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.

Public open space and common land

- 36.**—(1) As from the latest of—
- (a) the date on which this Order comes into force,
 - (b) the date on which the special category land is vested in Network Rail, or

⁽²⁵⁾ 1974 c. 40.

⁽²⁶⁾ See S.I. 1994/157.

(c) the date on which the exchange land is vested in Network Rail, the exchange land shall vest in the borough of Tamworth.

(2) Upon the vesting of the exchange land in the borough of Tamworth—

- (a) the special category land shall be discharged from all rights, trusts and incidents to which it was previously subject; and
- (b) the exchange land shall be subject to the like rights, trusts and incidents as attached to the special category land.

(3) The provisions of article 28 shall apply in relation to the entering upon and taking temporary possession of the land delineated on the deposited plans and thereon numbered 97, 109b, 159b, 159c, 160, 161, 197c, 200a, 202a, 202b, 202c, 202d, 202e, 203a, 205a, 205b, 206a, 239a and 240 in the borough of Tamworth and 176a, 176c, 177, 178a, 178d, 179, 203a, 203b and 203d in the district of Lichfield as if—

- (a) the land numbered 97, 159b, 159c, 160 and 161 in the borough of Tamworth and 176a, 176c, 177, 178a, 178d, 179, 203a, 203b and 203d in the district of Lichfield were specified in columns (1) and (2) of Schedule 11 to this Order for the purpose of use as working sites and accesses in relation to Work Nos. 1 and 2;
- (b) the land numbered 109b in the borough of Tamworth were specified in columns (1) and (2) of Schedule 11 to this Order for the purpose of use as a working site and access in relation to Work Nos. 1, 2 and 4; and
- (c) the land numbered 197c, 200a, 202a, 202b, 202c, 202d, 202e, 203a, 205a, 205b, 206a, 239a and 240 in the borough of Tamworth were specified in columns (1) and (2) of Schedule 11 to this Order for the purpose of use as working sites and accesses in relation to Work No. 5.

(4) As from the later of—

- (a) the date on which this Order comes into force, or
- (b) the date on which the land delineated on the deposited plans and thereon numbered 176b, 178b, 178c and 203c in the district of Lichfield, or any part of it, is vested in Network Rail,

that land or that part of it which is vested (as the case may be) shall be discharged from all rights, trusts and incidents to which it was previously subject.

(5) As from the later of—

- (a) the date on which this Order comes into force, or
- (b) the date on which any easement or other right over the land delineated on the deposited plans and thereon numbered 176c, 178d and 203d in the district of Lichfield is vested in Network Rail,

the land over which the easement or right is acquired shall be discharged from all rights, trusts and incidents to which it was previously subject so far as their continuance would be inconsistent with the exercise of that easement or other right.

(6) In this article—

“the special category land” means the land delineated on the deposited plans and thereon numbered 98, 109a, 150, 159a, 197a, 197b and 269 in the borough of Tamworth; and

“the exchange land” means the land delineated on the deposited plans and thereon numbered 252 and 253 in the borough of Tamworth.

Disclosure of confidential information

37. A person who—

- (a) enters a factory, workshop or workplace in pursuance of the provisions of article 20 or 21; 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.

Saving for regulated rights etc.

38. Nothing in this Order shall affect any estate, right or interest granted by Network Rail in respect of a railway facility which is subject to an access contract within the meaning of Part I of the Railways Act 1993⁽²⁷⁾.

Statutory undertakers etc.

39. The provisions of Schedule 12 to this Order shall have effect.

Protective provisions

40. The provisions of Schedule 13 to this Order shall have effect.

Certification of plans etc.

41. Network Rail 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, 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.

Service of notices

42.—(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⁽²⁸⁾ 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) 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

⁽²⁷⁾ 1993 c. 43, to which there are amendments not relevant to this article.

⁽²⁸⁾ 1978 c. 30.

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

- (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

43. 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

44. 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 for Transport

Ellis Harvey
Head of the Transport and Works Act Orders
Unit,
Department for Transport

12th February 2004

SCHEDULES

SCHEDULE 1

Articles 2 and 4

SCHEDULED WORKS

In the County of Staffordshire—

Work No. 1— A railway (10,137 metres in length) on the course of the existing railway, commencing in the borough of Tamworth by a junction with the West Coast Main Line railway, at a point 107 metres east of the bridge carrying the Birmingham to Derby lines over that railway being carried by a new bridge over the river Tame and terminating in the district of Lichfield by a junction with that railway at a point 258 metres south east of the bridge carrying Burton Road over that railway, including the reconstruction and extension of bridges over Anders/Wordsworth Avenue, Burton Road, Huddlesford Lane, the Coventry Canal, flood relief arches and culverts.

Work No. 2A— A railway (10,220 metres in length) on the course of the existing railway, commencing in the borough of Tamworth by a junction with the West Coast Main Line railway, at a point 87 metres east of the bridge carrying the Birmingham to Derby lines over that railway being carried by a new bridge over the Coventry Canal and terminating in the district of Lichfield by a junction with that railway at a point 161 metres south east of the bridge carrying Burton Road over that railway, including the reconstruction and extension of bridges over Anders/Wordsworth Avenue, Burton Road, Huddlesford Lane, flood relief arches and culverts.

District of Lichfield—

Work No. 2A— A new cut, being a realignment of a watercourse, commencing in that watercourse at a point 183 metres north west of Comberford Level Crossing and terminating in the river Tame at a point 100 metres south west of the bridge carrying the West Coast Main Line railway over that river.

Borough of Tamworth—

Work No. 3— A road, being a realignment of Upper Gungate (A513), commencing in Upper Gungate at a point 96 metres south of the bridge carrying that road over the West Coast Main Line railway and terminating in that road at a point 119 metres north of that bridge, including a reconstruction of the bridge over that railway.

Work No. 3A— A road, being a realignment of Offadrive (A513), commencing in that road at a point 58 metres south east of the bridge carrying Upper Gungate over the West Coast Main Line railway and terminating by a junction with Work No. 3, at a point 37 metres south of that bridge.

Work No. 3B— A road, being a realignment of Salter's Lane, commencing in that road at a point 52 metres north west of the bridge carrying Upper Gungate over the West Coast Main Line railway and terminating by a junction with Work No. 3, at a point 20 metres north of that bridge.

Work No. 4— A footbridge over the West Coast Main Line railway, commencing at a point 16 metres north of the junction of Ludgate with Freville Close and terminating at a point 78 metres south of the junction of Tennyson Avenue with Masfield Drive, including the demolition of the bridge over that railway.

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Work No. 5— A sewer, being a diversion of the Lichfield Road, 900mm Rising Main, commencing by a junction with that sewer at a point 222 metres north of the junction of Apollo with Armstrong extending under the West Coast Main Line railway to Wigginton Park, then extending in a north-westerly direction through Wigginton Park then extending along Edgar Close, Roman Way, Lanchester Close, Norman Close and Fontenaye Road and terminating by a junction with that sewer at a point 29 metres south west of the junction of Coton Lane with Fontenaye Road.

Work No. 6— A pedestrian underpass beneath the West Coast Main Line railway, commencing in footpath FP11 at a point 60 metres north east of the junction of Cavendish with Mariner and terminating in Roman Way at points, 23 metres south east of the junction of Roman Way with Norman Close and 62 metres west of the junction of Roman Way with Lanchester Close respectively.

Work No. 7— A road, being a realignment of Coton Lane, commencing in Coton Lane at a point 195 metres south west of the bridge carrying that road over the West Coast Main Line railway and terminating at a point 186 metres north east of that bridge including the construction of a bridge over that railway.

Work No. 7A— A road, being a realignment of Fontenaye Road, commencing in that road at a point 43 metres south east of the junction of that road with Coton Lane and terminating by a junction with Work No. 7, at a point 135 metres north east of the bridge carrying Coton Lane over the West Coast Main Line railway.

District of Lichfield—

Work No. 8— A footbridge over the West Coast Main Line railway commencing at a point 30 metres west of Comberford Level Crossing and terminating at a point 21 metres north of that crossing.

Work No. 9— An accommodation road commencing at a point 55 metres south east of the accommodation access bridge over the Coventry Canal to Tamhorn Cottages and terminating in the C75 road at a point 96 metres east of Hademore Crossing including the construction of a bridge over the West Coast Main Line railway and the demolition of an accommodation bridge (Overbridge 90) over, and the infilling of an accommodation bridge (Underbridge 88) under, that railway.

Work No. 9A— An accommodation spur road commencing at a point 32 metres south west of an accommodation bridge (Overbridge 90) over the West Coast Main Line railway and terminating by a junction with Work No. 9 at a point 75 metres south of that bridge.

Work No. 10— A road, being a realignment of Fisherwick Road and the C75 road, commencing in Fisherwick Road at a point 295 metres west of Hademore Crossing and terminating in the C75 road at a point 312 metres north east of that crossing including the construction of a bridge over the West Coast Main Line railway and the relocation of listed gate posts.

Work No. 10A— A spur road, commencing in Fisherwick Road at a point 189 metres south west of Hademore Crossing and terminating by a junction with Work No. 10 at a point 247 metres west of that crossing.

Work No. 10B— A spur road, commencing in the C75 road at a point 147 metres north east of Hademore Crossing and terminating by a junction with Work No. 10 at a point 189 metres north east of that crossing.

Work No. 10C— An accommodation road, commencing at a point 266 metres north west of Hademore Crossing and terminating by a junction with Work No. 10 at a point 150 metres north of that crossing.

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Work No. 11— A road, being a lowering of Burton Road, commencing at a point 18 metres south west of the bridge carrying the West Coast Main Line railway over that road and terminating at a point 82 metres north east of that bridge.

Work No. 12— A road, being a lowering of Huddlesford Lane, commencing at a point 120 metres south west of the bridge carrying the West Coast Main Line railway over that road and terminating at a point 73 metres north east of that bridge including a regrading of accommodation access.

Work No. 13A— A reconstruction and extension of the bridge carrying the eastern carriageway of the A38 trunk road over the West Coast Main Line railway, commencing at a point 25 metres south of that bridge and terminating at a point 27 metres north east of that bridge.

Work No. 13B— A reconstruction and extension of the bridge carrying the western carriageway of the A38 trunk road over the West Coast Main Line railway, commencing at a point 25 metres south west of that bridge and terminating at a point 26 metres north of that bridge.

Borough of Tamworth—

Work No. 14— A new cut, being a realignment of a watercourse, commencing in that watercourse at a point 153 metres south west of the south west corner of the Anker Valley Football Club House and terminating in that watercourse at a point 315 metres south west of that corner.

SCHEDULE 2

Articles 4 and 22

ADDITIONAL WORKS AND LANDS

<i>(1)</i> <i>Area/locality</i>	<i>(2)</i> <i>Number of land shown on deposited plans</i>	<i>(3)</i> <i>Purpose for which land may be acquired and used</i>
County of Staffordshire Borough of Tamworth Tamworth-Lichfield Four Tracking	80, 105	Demolition and reconstruction of garages.
	83, 85, 86, 87, 89, 91, 93, 95	Diversion of sewer.
	253	Provision of open space and working site.
	152, 153	Diversion of footpath FP 1R/2293.
	158	Reconstruction of garages, provision of turning area and working site.
	159	Provision of vehicle turning area and working site.
	160	Diversion of track, gas main and working site.

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<i>(1)</i> <i>Area/locality</i>	<i>(2)</i> <i>Number of land shown on deposited plans</i>	<i>(3)</i> <i>Purpose for which land may be acquired and used</i>
	161	Diversion of gas main and working site.
	163, 233	Demolition of warehouses and provision of working site.
	218, 231	Right of access for construction and maintenance.
	248	Provision of maintenance and accommodation access and working site.
	252	Provision of open space.
Tamworth South	265, 266, 267, 268, 272, 274	Provision of access for construction and maintenance and working site.
	259, 261, 263	Provision of vehicular lay-bys (Bracklesham Way) for maintenance.
District of Lichfield Tamworth-Lichfield Four Tracking	2	Provision of maintenance and accommodation access and working site.
	5, 8	Provision of maintenance and accommodation access, diversion of footpath FP 22 and working site.
	7	Provision of maintenance and accommodation access, turning area and working site.
	17, 18	Right of access for construction and maintenance.
	14, 31, 32, 43, 211	Provision of turning areas, maintenance accesses and working sites.
	16, 29, 46	Provision of maintenance accesses and working sites.
	49	Provision of accommodation access and working site.
	51	Provision of accommodation access.
	55, 56, 57, 210	Right of access for maintenance.
	77, 78, 82	Provision of drainage soakaway and working site.

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<i>(1)</i> <i>Area/locality</i>	<i>(2)</i> <i>Number of land shown on deposited plans</i>	<i>(3)</i> <i>Purpose for which land may be acquired and used</i>
	94, 95, 112, 113	Provision of vehicle turning areas.
	109, 156, 157	Provision of road drainage and working site.
	182	Provision of highway visibility splay.

SCHEDULE 3

Article 7

REPLACEMENT OF ROAD LEVEL CROSSING

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Level crossing to be discontinued</i>	<i>(3)</i> <i>Street to be stopped up</i>	<i>(4)</i> <i>Accommodation works</i>
County of Staffordshire			
District of Lichfield	The level crossing known as Hademore crossing whereby Fisherwick Road and the C75 road are crossed on the level by the West Coast Main Line railway between Tamworth and Lichfield (Trent Valley) stations	Fisherwick Road and C75 road between points S1 and S2	Work Nos. 10, 10A, 10B and 10C.

SCHEDULE 4

Article 8

REPLACEMENT OF FOOTPATH LEVEL CROSSINGS

LEVEL CROSSINGS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Level crossing to be discontinued</i>	<i>(3)</i> <i>Footpath to be stopped up</i>	<i>(4)</i> <i>New footpath to be substituted</i>
County of Staffordshire			
Borough of Tamworth	The level crossing at Alders	Footpath FP11 between points F13, F14 and F15	Footpath between points F13, F16 and F17 and between

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Level crossing to be discontinued</i>	<i>(3)</i> <i>Footpath to be stopped up</i>	<i>(4)</i> <i>New footpath to be substituted</i>
District of Lichfield	The level crossing at Comberford	Footpath FP22 between points C1 and C2	points F16 and F18/S3 to be carried under the West Coast Main Line railway by means of Work No. 6. Footpath between points F4, F5, F6, F7, F8, F9 and C2 to be carried over the West Coast Main Line railway by means of Work No. 8.

SCHEDULE 5

Article 10

STREETS SUBJECT TO STREET WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to street works</i>
County of Staffordshire Borough of Tamworth	Upper Gungate (A513), Offadrive (A513), Salter's Lane, Croft Street, Cross Street, Ludgate, Footway between Ludgate and Tennyson Avenue, Tennyson Avenue, St Austell Close, Wordsworth Avenue, Anders, Footpath FP 1R/2293, Edgar Close, Roman Way, Lanchester Close, Norman Close, Fontenaye Road, Cromwell Road, Coton Lane, Footpath FP 11, Footpath FP 25, Moor Lane, Footpath FP T105, Bracklesham Way.
District of Lichfield	Tamworth Road (A513), Fisherwick Road, Bridleway BR 2, C75, Burton Road, Huddlesford Lane, A38(T), Cappers Lane (A5192), Burton Old Road.

SCHEDULE 6

Article 11

STREETS TO BE PERMANENTLY STOPPED UP

PART 1

STREETS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New street to be substituted</i>
County of Staffordshire			
Borough of Tamworth	Footway between Ludgate and Tennyson Avenue	Between points F1/S1 and F2/S2	Footpath between points F3, F4, F5, F6 and F7 (Work No. 4).
	Footpath FP 1R/2293	Between points F9 and F10	Footpath between points F11 and F12.
	Footpath FP11	Between points F13, F14 and F15	Footpath between points F13, F16 and F17 and between points F16 and F18/S3 (Work No. 6).
District of Lichfield	Coton Lane	Within the Order limits	Work No. 7.
	Footpath FP22	Between points F1, F2 and C1	Footpath between points F1, F3, F4, then between points F4, F5, F6, F7, F8 and F9 (Work No. 8) and then between points F9 and C2.
	Fisherwick Road	Between points S3 and S4	Work Nos. 10 and 10A.
	C75 road	Between points S5 and S6	Work Nos. 10 and 10B.

PART II

STREETS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>
County of Staffordshire		
Borough of Tamworth	Ludgate/Tennyson Avenue (vehicular traffic)	Between points F1/S1 and F2/S2.

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>
District of Lichfield	Roman Way (vehicular traffic)	Between points F18/S3 and S4.
	Fisherwick Road	Between points S1 and S8.
	C75 road	Between points S1 and S7.

SCHEDULE 7

Article 12

STREETS TO BE TEMPORARILY STOPPED UP

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Streets to be stopped up</i>
County of Staffordshire	
Borough of Tamworth	Upper Gungate (A513) Offadrive (A513) Salter's Lane Croft Street Cross Street Freville Close Ludgate Tennyson Avenue St. Austell Close Footpath FP 1R/2293 Wordsworth Avenue Anders Footpath FP 7 Edgar Close Roman Way Lanchester Close Norman Close Fontenaye Road Footpath FP 25 Cromwell Road Coton Lane Moor Lane Footpath FP T105

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Streets to be stopped up</i>
District of Lichfield	Bracklesham Way. Footpath FP 22 Bridleway BR10 Tamworth Road (A513) Footpath FP 12 (Parish of Wigginton and Hopwas) Footpath FP 11 Towing path of the Coventry Canal Fisherwick Road Bridleway BR 2 C75 Burton Road Footpath FP 12 (Parish of Whittington) Huddlesford Lane A38(T) Cappers Lane (A5192) Burton Old Road.

SCHEDULE 8

Article 14

ACCESS TO WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Description of Access</i>
County of Staffordshire	Upper Gungate (A513)
Borough of Tamworth	Offadrive (A513)
	Cross Street
	Tennyson Avenue
	St. Austell Close
	Anders
	Roman Way
	Coton Lane
	Moor Lane.
District of Lichfield	Tamworth Road (A513)

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Description of Access</i>
	Fisherwick Road
	Burton Road
	Huddlesford Lane
	Cappers Lane (A5192)
	Burton Old Road.

SCHEDULE 9

Article 24

MODIFICATION OF COMPENSATION AND COMPULSORY
PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land shall apply with the necessary modifications as respects compensation in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without prejudice to the generality of paragraph 1, the Land Compensation Act 1973(29) shall have effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (a) for the words “land is acquired or taken” there shall be substituted the words “a right over land is purchased”; and
- (b) for the words “acquired or taken from him” there shall be substituted the words “over which the right is exercisable”.

(3) In section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5—

- (a) for the word “part” in paragraphs (a) and (b) there shall be substituted the words “a right over land consisting”;
- (b) for the word “severance” there shall be substituted the words “right over the whole of the house, building or manufactory or of the house and the park or garden”;
- (c) for the words “part proposed” there shall be substituted the words “right proposed”; and
- (d) for the words “part is” there shall be substituted the words “right is”.

Adaptation of the 1965 Act

3.—(1) The 1965 Act shall have effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that

(29) 1973 c. 26.

Act to land are to be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or
- (b) the land over which the right is or is to be exercisable.

(2) Without prejudice to the generality of sub-paragraph (1), Part I of the 1965 Act shall apply in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

4. For section 7 of the 1965 Act (measure of compensation) there shall be substituted the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Act regard shall be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of his, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

5. For section 8 of the 1965 Act (which relates to cases in which a vendor cannot be required to sell part only of a building or garden) there shall be substituted the following—

“8.—(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

- (a) a question of disputed compensation in respect of the purchase of the right would apart from this section fall to be determined by the Lands Tribunal (“the tribunal”); and
- (b) before the tribunal has determined that question the person satisfies the tribunal that he has an interest which he is able and willing to sell in the whole of the relevant land and—
 - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased without material detriment to that land, or
 - (ii) where that land consists of such a park or garden, that the right cannot be purchased without seriously affecting the amenity or convenience of the house to which that land belongs,

the Network Rail (West Coast Main Line) Order 2004 (“the Order”) shall, in relation to that person, cease to authorise the purchase of the right and be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice shall be deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section shall be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of six weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”

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6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey),
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity),
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners), and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

shall be so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired is vested absolutely in the acquiring authority.

7. Section 11 of the 1965 Act (powers of entry) shall be so modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right, it has power, exercisable in the like circumstances and subject to the like conditions, to enter for the purpose of exercising that right (which shall be deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act shall be modified correspondingly.

8. Section 20 of the 1965 Act (protection for interests of tenants at will etc.) shall apply with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

9. Section 22 of the 1965 Act (protection of acquiring authority’s possession where by inadvertence an estate, right or interest has not been got in) shall be so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 10

Article 26

LAND IN RESPECT OF WHICH SOIL NAILING RIGHTS MAY BE ACQUIRED

<i>(1)</i> Area	<i>(2)</i> Number of land shown on deposited plans
County of Staffordshire	
Borough of Tamworth	
Tamworth-Lichfield Four Tracking	18, 19, 20, 22, 24, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 42, 44, 45, 47, 49, 51, 52, 53, 55, 56, 57, 58, 59, 60, 61, 63, 65, 68, 70, 72.

SCHEDULE 11

Article 28

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN OR USE MADE

<i>(1)</i> <i>Number of land shown on deposited plans</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken or use made</i>	<i>(3)</i> <i>Work or facility</i>	<i>(4)</i>
County of Staffordshire			
Borough of Tamworth			
Tamworth —Lichfield—			
Four Tracking	2, 3, 5	Right of access	Work Nos. 1, 2, 3, 3A and 3B.
	4, 10	Working sites	Work Nos. 1, 2, 3, 3A and 3B.
	8	Relocation of pedestrian access and working site	Work Nos. 1, 2, and 3.
	49, 50	Working site and provision of replacement car parking	Work Nos. 1 and 2.
	62, 63, 64, 65, 66, 68, 72	Working sites	Work Nos. 1, 2 and 4.
	67	Working site and realignment of driveway	Work Nos. 1, 2 and 4.
	74, 76, 78, 84, 99, 101, 103, 111, 112, 113, 115, 117, 119, 121, 123, 125, 127, 129, 131, 133, 135, 137, 139, 141, 143, 145, 147, 149, 151, 165, 166, 168, 170, 175, 177, 180, 181, 182, 185, 190, 193, 195, 198, 216, 226, 229, 232, 236, 238, 251, 254, 256	Working sites	Work Nos. 1 and 2.
	172	Working site	Work Nos. 1, 2 and 5.
	173	Right of access	Work Nos. 1, 2 and 5.

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<i>(1) Number of land shown on deposited plans</i>	<i>(2) Purpose for which temporary possession may be taken or use made</i>	<i>(3) Work or facility</i>	<i>(4)</i>
	188, 192, 223, 225, 228	Right of access	Work Nos. 1 and 2.
	219, 220	Working site	Work Nos. 1, 2 and 6.
	241, 242	Working site	Work Nos. 1, 2, 5, 7 and 7A.
	246	Working site	Work Nos. 1, 2, 2A and 7.
	247	Working site	Work Nos. 1, 2 and 2A.
District of Lichfield	1, 4, 26	Working sites	Work Nos. 1, 2 and 2A.
	6	Working site	Work Nos. 1, 2, 2A and 8.
	11, 12, 38, 39, 44, 48, 60, 62, 70, 71, 92, 93, 96, 161, 164, 169, 173, 180, 187, 189, 191, 225	Working sites	Work Nos. 1 and 2.
	13, 15, 22a, 23	Working sites	Work Nos. 1, 2 and 8.
	20, 20a, 45, 58, 6785, 86, 87	Working sites	Work Nos. 1, 2, 9, 9A, 10, 10A, 10B, 10C and 11.
	21	Access	Work Nos. 1, 2, 9, 9A, 10, 10A, 10B, 10C and 11.
	22, 34, 42	Temporary vehicular bridge and working sites	Work Nos. 1, 2, 9, 9A, 10, 10A, 10B, 10C and 11.
	74, 75, 79, 81, 83	Working sites	Work Nos. 9 and 9A.
	110, 122	Working sites	Work Nos. 10, 10A, 10B and 10C.
	115, 128, 129, 132, 135, 135a, 137, 139, 141, 143, 145, 147, 149, 151	Working sites	Work Nos. 1, 2 and 11.
	183, 193, 196	Temporary vehicular bridge and working sites	Work Nos. 1, 2 and 12.
	188, 224	Right of access	Work Nos. 1 and 2.

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(1) <i>Number of land shown on deposited plans</i>	(2) <i>Purpose for which temporary possession may be taken or use made</i>	(3) <i>Work or facility</i>	(4)
	198, 207, 207b	Working sites	Work Nos. 1, 2 and 12.
	205	Working site	Work Nos. 1, 2, 12, 13A and 13B.
	213, 221, 223, 228, 230, 232	Working sites	Work Nos. 1, 2, 13A and 13B.
	216, 218	Working sites and traffic management measures	Work Nos. 13A and 13B.
	222	Right of access	Work Nos. 1, 2, 13A and 13B.

SCHEDULE 12

Article 39

PROVISIONS RELATING TO STATUTORY UNDERTAKERS ETC.

Apparatus of statutory undertakers etc. on land acquired

1.—(1) Sections 271 to 274 of the 1990 Act (power to extinguish rights of statutory undertakers etc. and power of statutory undertakers etc. to remove or re-site apparatus) shall apply in relation to any land acquired or appropriated by Network Rail under this Order subject to the following provisions of this paragraph; and all such other provisions of that Act as apply for the purposes of those provisions (including sections 275 to 278, which contain provisions consequential on the extinguishment of any rights under sections 271 and 272, and sections 279(2) to (4), 280 and 282, which provide for the payment of compensation) shall have effect accordingly.

(2) In the provisions of the 1990 Act, as applied by sub-paragraph (1), references to the appropriate Minister are references to the Secretary of State.

(3) Where any apparatus of public utility undertakers or of an electronic communications code operator or former PTO is removed in pursuance of a notice or order given or made under section 271, 272 or 273 of the 1990 Act, as applied by sub-paragraph (1), any person who is the owner or occupier of premises to which a supply was given from that apparatus shall be entitled to recover from Network Rail compensation in respect of expenditure reasonably incurred by him, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(4) Sub-paragraph (3) shall not apply in the case of the removal of a public sewer but where such a sewer is removed in pursuance of such a notice or order as is mentioned in that paragraph, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer, or
- (b) the owner of a private sewer which communicated with that sewer,

shall be entitled to recover from Network Rail compensation in respect of expenditure reasonably incurred by him, in consequence of the removal, for the purpose of making his drain or sewer communicate with any other public sewer or with a private sewage disposal plant.

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(5) The provisions of the 1990 Act mentioned in sub-paragraph (1), as applied by that sub-paragraph, shall not have effect in relation to apparatus as respects which paragraph 2 or Part III of the Street Works Act applies.

(6) In this paragraph—

“the 1990 Act” means the Town and Country Planning Act 1990; and

“public utility undertakers” has the same meaning as in the Highways Act 1980.

Apparatus of statutory undertakers etc. in stopped up streets

2.—(1) Where a street is stopped up under this Order any statutory utility whose apparatus is under, in, upon, over, along or across the street shall have the same powers and rights in respect of that apparatus, subject to the provisions of this paragraph, as if this Order had not been made.

(2) Where a street is stopped up under this Order any statutory utility whose apparatus is under, in, upon, over, along or across the street may and, if reasonably requested so to do by Network Rail, shall—

(a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or

(b) provide other apparatus in substitution for the existing apparatus and place it in such position as aforesaid.

(3) Subject to the following provisions of this paragraph, Network Rail shall pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

(a) the execution of relocation works required in consequence of the stopping up of the street; and

(b) the doing of any other work or thing rendered necessary by the execution of relocation works.

(4) If in the course of the execution of relocation works under sub-paragraph (2)—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions, except where this has been solely due to using the nearest currently available type; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by Network Rail, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this paragraph would be payable to the statutory utility by virtue of sub-paragraph (3) shall be reduced by the amount of that excess.

(5) For the purposes of sub-paragraph (4)—

(a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

(6) An amount which apart from this sub-paragraph would be payable to a statutory utility in respect of works by virtue of sub-paragraph (3) (and having regard, where relevant, to sub-paragraph (4)) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Sub-paragraphs (3) to (6) shall not apply where the authorised works constitute major transport works for the purposes of Part III of the Street Works Act, but instead—

- (a) the allowable costs of the relocation works shall be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and
- (b) the allowable costs shall be borne by Network Rail and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this paragraph—

“apparatus” has the same meaning as in Part III of the Street Works Act;

“relocation works” means works executed, or apparatus provided, under sub-paragraph (2); and

“statutory utility” means a statutory undertaker for the purposes of the Highways Act 1980 or an electronic communications code operator or former PTO.

Railway and navigation undertakings

3.—(1) Subject to the following provisions of this paragraph, the powers under article 10 of this Order to break up or open a street shall not be exercisable where the street, not being a highway maintainable at public expense (within the meaning of the Highways Act 1980)—

- (a) is under the control or management of, or is maintainable by, railway or tramway undertakers or a navigation authority; or
- (b) forms part of a level crossing belonging to any such undertakers or to such an authority or to any other person,

except with the consent of the undertakers or authority or, as the case may be, of the person to whom the level crossing belongs.

(2) Sub-paragraph (1) shall not apply to the carrying out under this Order of emergency works, within the meaning of Part III of the Street Works Act.

(3) A consent given for the purposes of sub-paragraph (1) may be made subject to such reasonable conditions as may be specified by the person giving it but shall not be unreasonably withheld.

(4) In this paragraph “navigation authority” means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary, harbour or dock.

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SCHEDULE 13

Article 40

PROTECTIVE PROVISIONS

PART I

PROTECTION FOR ELECTRICITY, GAS AND WATER UNDERTAKERS

1.—(1) For the protection of the undertakers referred to in this Part of this Schedule the following provisions shall, unless otherwise agreed in writing between Network Rail and the undertaker concerned, have effect.

(2) In this Part of this Schedule—

“adequate alternative apparatus” means alternative apparatus adequate to enable the undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989⁽³⁰⁾) belonging to or maintained by that undertaker; or
- (b) in the case of a gas or water undertaker, any mains, pipes or other apparatus belonging to or maintained by such undertaker,

(not being, except in paragraph 2, apparatus in respect of which the relations between Network Rail and the undertaker in question are regulated by the provisions of Part III of the Street Works Act) and includes any structure for the lodging therein of apparatus or for giving access to apparatus;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;

“plan” includes sections and method statements; and

“undertaker” means any person authorised to carry on, in any area within which Network Rail is by this Order authorised to purchase land or execute works, an undertaking for the supply of water or the supply, transportation or storage of gas or for the generation, transmission or supply of electricity; and, in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

(3) The provisions of Schedule 12 to this Order shall not apply in relation to apparatus to which this Part of this Schedule applies.

2. Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 12 of this Order, an undertaker shall be at liberty at all times to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain, renew, or use any apparatus which at the time of the stopping up or diversion was in that highway.

3.—(1) Network Rail, in the case of the powers conferred by article 20 of this Order, shall, so far as is reasonably practicable, so exercise those powers as not to obstruct or render less convenient the access to any apparatus and, if by reason of the exercise of those powers, any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of any undertaker or any interruption in the supply of electricity, gas or water, as the case may be, by the undertaker is caused, Network Rail shall bear and pay the cost

(30) 1989 c. 29.

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reasonably incurred by that undertaker in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

- (a) make reasonable compensation to the undertaker for any loss sustained by it; and
- (b) indemnify the undertaker against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by that undertaker,

by reason of any such damage or interruption.

(2) Nothing in this paragraph shall impose any liability on Network Rail with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of an undertaker or its contractors or workmen; and the undertaker shall give to Network Rail reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of Network Rail.

4. Notwithstanding anything in this Order or shown on the deposited plans Network Rail shall not acquire any apparatus under the powers of this Order otherwise than by agreement.

5.—(1) If Network Rail, in the exercise of the powers of this Order, acquires any interest in any land in which any apparatus is placed, that apparatus shall not be removed under this Part of this Schedule and any right of an undertaker to use, maintain or renew that apparatus in that land shall not be extinguished until adequate alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the undertaker in question.

(2) If Network Rail, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, requires the removal of any apparatus placed in that land, it shall give to the undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed so as to provide adequate alternative apparatus in lieu of the apparatus to be removed, and in that case (or if in consequence of the exercise of any of the powers of this Order the undertaker reasonably requires to remove any apparatus) Network Rail shall, subject to sub-paragraph (3), afford to the undertaker the necessary facilities and rights for the construction of the alternative apparatus in other land of Network Rail and thereafter for the use, maintenance and renewal of that apparatus.

(3) If the alternative apparatus or any part of it is to be constructed elsewhere than in other land of Network Rail, or Network Rail is unable to afford such facilities and rights as aforesaid in the land in which the alternative apparatus or part of it is to be constructed, the undertaker shall, on receipt of a written notice to that effect from Network Rail, forthwith use its best endeavours to obtain the necessary facilities and rights in that last-mentioned land.

(4) Any alternative apparatus to be constructed in land of Network Rail under this Part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between the undertaker in question and Network Rail or in default of agreement settled by arbitration under article 44 of this Order.

(5) The undertaker in question shall, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration as aforesaid and after the grant to the undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed with all reasonable dispatch to construct and bring into operation the alternative apparatus and thereafter to remove any apparatus required by Network Rail to be removed under the provisions of this Part of this Schedule.

(6) Notwithstanding anything in sub-paragraph (5), if Network Rail gives notice in writing to the undertaker in question that it desires itself to execute any part of so much of the work necessary in connection with the construction of the alternative apparatus, or the removal of the apparatus required to be removed, as will take place in any land of Network Rail, that work, instead of being carried out by the undertaker, shall be carried out by Network Rail in accordance with plans and

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specifications and in a position agreed between the undertaker and Network Rail or in default of agreement determined by arbitration, with all reasonable dispatch under the superintendence, if given, and to the reasonable satisfaction of the undertaker.

(7) Nothing in sub-paragraph (6) shall authorise Network Rail to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

6.—(1) Where, in accordance with the provisions of this Part of this Schedule, Network Rail affords to an undertaker facilities and rights for the construction, maintenance and renewal in land of Network Rail of alternative apparatus in substitution for apparatus to be removed as aforesaid, those facilities and rights shall be granted upon such terms and conditions as may be agreed between Network Rail and the undertaker in question or in default of agreement settled by arbitration in accordance with sub-paragraphs (2) and (3).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in or along any railway of Network Rail, the arbitrator shall—

- (a) give effect to all reasonable requirements of Network Rail for ensuring the safe and efficient operation of the railway and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of Network Rail or the traffic on the railway; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions (if any) applicable to the apparatus for which the alternative apparatus is to be substituted and have regard to the undertaker's ability to fulfil its service obligations.

(3) If the facilities and rights to be afforded by Network Rail in respect of any alternative apparatus and the terms and conditions subject to which the same are to be granted are in the opinion of the arbitrator less favourable on the whole to the undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator shall make such provision for the payment of compensation by Network Rail to the undertaker as appears to him to be reasonable having regard to all the circumstances of the particular case.

7.—(1) Not less than 28 days before commencing the execution of any works that are referred to in paragraph 5(2) and are near to, or will or may affect, any apparatus the removal of which has not been required by Network Rail under paragraph 5(2), Network Rail shall submit to the undertaker in question a plan, section and description of the works to be executed.

(2) Those works shall be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the undertaker for the alteration or otherwise for the protection of the apparatus or for securing access thereto and the undertaker shall be entitled by its officer to watch and inspect the execution of those works.

(3) Any requirements made by the undertaker under sub-paragraph (2) shall be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If an undertaker within 21 days after the submission to it of a plan, section and description shall, in consequence of the works proposed by Network Rail, reasonably requires the removal of any apparatus and gives written notice to Network Rail of that requirement, the foregoing provisions of this Part of this Schedule shall apply as if the removal of the apparatus had been required by Network Rail under paragraph 5(2).

(5) Nothing in this paragraph shall preclude Network Rail from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a

new plan, section and description of the works in lieu of the plan, section and description previously submitted, and thereupon the provisions of this paragraph shall apply in respect of the new plan, section and description.

(6) Network Rail shall not be required to comply with sub-paragraph (1) in a case of emergency but in that case it shall give to the undertaker in question notice as soon as reasonably practicable and a plan, section and description of those works as soon as reasonably practicable thereafter and shall comply with sub-paragraph (2) so far as reasonably practicable in the circumstances.

8. Where, by reason of this Order, any part of any highway in which any apparatus is situated ceases to be part of a highway an undertaker may exercise the same rights of access to such apparatus as it enjoyed immediately before the coming into force of this Order, but nothing in this paragraph shall affect any right of Network Rail or of the undertaker to require removal of such apparatus under this Part of this Schedule or the power of Network Rail to execute works in accordance with paragraph 7.

9.—(1) Subject to the following provisions of this paragraph, Network Rail shall pay to an undertaker the costs, charges and expenses reasonably incurred by that undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 5(2), less the value of any apparatus removed under the provisions of this Part of this Schedule (that value being calculated after removal), and shall also make compensation to that undertaker—

- (a) for any damage caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal in accordance with the provisions of this Part of this Schedule); and
- (b) for any other expenses, loss, damages, penalty or costs incurred by the undertaker,

by reason of the execution, maintenance, user or failure of those works or otherwise by reason of the exercise by Network Rail of the powers of this Order.

(2) If in pursuance of the provision of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions, except where this has been solely due to using the nearest currently available type; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by Network Rail or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this paragraph would be payable to the undertaker in question by virtue of sub-paragraph (1) shall be reduced by the amount of that excess.

(3) For the purposes of sub-paragraph (2)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

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(4) An amount which apart from this sub-paragraph would be payable to an undertaker in respect of works by virtue of sub-paragraph (1) (and having regard, where relevant, to sub-paragraph (2)) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(5) Sub-paragraphs (1) to (4) shall not apply where the authorised works constitute major transport works for the purposes of Part III of the Street Works Act, but instead—

- (a) the allowable costs of the construction of works under this Part of this Schedule shall be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and
- (b) the allowable costs shall be borne by Network Rail and the undertaker in such proportions as may be prescribed by any such regulations.

10. If in consequence of the exercise of the powers of this Order the access to any apparatus is materially obstructed Network Rail shall, so far as reasonably practicable, provide alternative means of access to such apparatus which is no less convenient than the access enjoyed by the undertaker prior to the obstruction.

11.—(1) Where, by reason of the stopping up of any highway pursuant to this Order, any apparatus belonging to an undertaker and laid or placed in such highway or elsewhere is rendered derelict or unnecessary, Network Rail shall, subject to sub-paragraph (2), pay to that undertaker the then value of such apparatus (which shall thereupon become the property of Network Rail) and the reasonable cost of and incidental to the cutting off of such apparatus from any other apparatus, and of and incidental to the execution or doing of any works or things rendered necessary or expedient by reason of such apparatus being so rendered derelict or unnecessary.

(2) Network Rail shall not under the provisions of this paragraph be required to pay to an undertaker the value of any apparatus rendered derelict or unnecessary if, to the reasonable satisfaction of the undertaker, other apparatus has at the expense of Network Rail been provided and laid and made ready for use in substitution for the apparatus so rendered derelict or unnecessary.

12. Any difference arising between Network Rail and an undertaker under this Part of this Schedule shall be referred to and settled by arbitration under article 44 of this Order.

13. Nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between Network Rail and an undertaker in respect of any apparatus laid or erected in land belonging to Network Rail on the coming into force of this Order.

PART II

PROTECTION FOR OPERATORS OF AN ELECTRONIC COMMUNICATIONS CODE NETWORK

14. For the protection of any operator of an electronic communications code network (in this Part of this Schedule referred to as “the operator”) the following provisions shall, unless otherwise agreed in writing between Network Rail and the operator, have effect.

15. The temporary stopping up or diversion of any highway under article 12 of this Order shall not affect any right of the operator under paragraph 9 of the electronic communications code to maintain any apparatus which, at the time of the stopping up or diversion, is in that highway.

16.—(1) Subject to sub-paragraphs (2) to (4), if by reason or in consequence of the construction of the authorised works or any subsidence resulting from any of those works, any damage is caused

to any electronic communications apparatus belonging to British Telecommunications plc (“BT”), other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works, or other property of BT, or there is any interruption in the supply of the service provided by BT, Network Rail shall bear and pay the cost reasonably incurred by BT in making good such damage or restoring the supply and shall—

- (a) make reasonable compensation to BT for loss sustained by it, and
- (b) indemnify BT against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, BT, by reason or in consequence of any such damage or interruption.

(2) Sub-paragraph (1) shall not apply to any apparatus in respect of which the relations between Network Rail and BT are regulated by the provisions of Part III of the Street Works Act or to any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised works.

(3) Nothing in sub-paragraph (1) shall impose any liability on Network Rail with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of BT, its officers, servants, contractors or agents.

(4) BT shall give Network Rail reasonable notice of any such claim or demand and no settlement or compromise thereof shall be made without the consent of Network Rail which, if it withholds such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

17. Any difference arising between Network Rail and the operator under this Part of this Schedule shall be referred to and settled by arbitration under article 44 of this Order.

PART III

PROTECTION FOR SEWERAGE UNDERTAKERS

18.—(1) For the protection of sewerage undertakers the following provisions shall, unless otherwise agreed in writing between Network Rail and the sewerage undertaker concerned, have effect.

(2) In this part of this Schedule—

“construction” includes placing or altering; and “constructed” shall be construed accordingly;

“plan” includes sections and method statements;

“sewer” means a public sewer within the meaning of the Water Industry Act 1991 and includes a disposal main within the meaning of that Act;

“specified work” means so much of the authorised works as will or may be situated over or within 15 metres measured in any direction of, or (wherever situated) impose any load directly upon, any sewer; and

“the undertaker” means the sewerage undertaker for the area of the works or whose sewers are affected.

(3) The provisions of Schedule 12 to this Order shall not apply in relation to apparatus to which this Part of this Schedule applies.

19.—(1) Before commencing the construction or renewal of any specified work and in the case of any temporary work its removal, Network Rail shall submit to the undertaker plans of the work as described in sub-paragraph (3) (in this Part of this Schedule referred to as “the plans”) and shall not commence that work until the undertaker has signified in writing its approval of those plans.

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- (2) Any approval of the undertaker required under this paragraph—
- (a) may be given subject to reasonable conditions,
 - (b) shall not be unreasonably withheld, and
 - (c) shall be deemed to have been given if it is neither given nor refused within 56 days of the submission of plans for approval.

(3) The plans to be submitted to the undertaker shall be detailed plans, drawings, sections and specifications describing the position and manner in which, and the level at which, any specified work is proposed to be constructed and the position of all sewers of the undertaker within 15 metres of that work or upon which the specified work will impose a load and shall include detailed drawings of every alteration which Network Rail may propose to any such sewers.

(4) For the purpose of the preparation of the plans the undertaker shall permit Network Rail to have access to plans in its possession and to any of its sewers.

(5) The undertaker may require such modifications to be made to the plans as may be reasonably necessary to secure the sewerage system of the undertaker against interference or risk of damage and to provide and secure proper and convenient means of access to any sewer.

20.—(1) The specified work shall be constructed and in the case of any temporary work removed, in accordance with the plans approved, or deemed to have been approved under paragraph 19 or settled by arbitration, as the same may be amended from time to time by agreement between Network Rail and the undertaker, and in the construction or removal of any specified work Network Rail shall comply with all reasonable requirements of the undertaker and shall provide new, altered or substituted sewers or works for the protection of any sewers of the undertaker, in such manner as the undertaker may reasonably require by way of replacement provision for or for the proper protection of, and for preventing injury or impediment to, any such sewer by reason of any specified work.

(2) All works under sub-paragraph (1) for the provision of new, altered or substituted sewers or the protection of any sewers of the undertaker shall, where so required by the undertaker, be constructed by the undertaker or under the supervision (if given) of an officer of the undertaker duly appointed for the purpose, and all costs, charges and expenses reasonably incurred by the undertaker in the construction of such works, or in the preparation or examination of plans or designs for such works, or in such supervision, shall be paid to the undertaker by Network Rail.

(3) When works for the provision of any such new, altered or substituted sewer, or any such protective work forming part of any such new, altered or substituted sewer or any existing sewer of the undertaker, have been completed under this Part of this Schedule to the reasonable satisfaction of the undertaker, they shall be vested in and become maintainable by the undertaker.

21.—(1) Subject to the following provisions of this Part of this Schedule, Network Rail shall be liable to make good, or, if the undertaker so decides, to repay to the undertaker any expense reasonably incurred by the undertaker in making good, all injury or damage to any sewers, drains or works vested in the undertaker (except in so far as such sewer, drain or work is intended for alteration or removal for the purposes of the specified work) caused by or resulting from the construction of any specified work or any investigation undertaken in respect of any specified work and the provision of any new, altered or substituted sewer or any protective work under this Part of this Schedule and shall pay to the undertaker any additional expense to which it may be put in the maintenance, management or renewal of any new, altered or substituted sewer which may be necessary in consequence of the construction of any specified work.

(2) Network Rail shall indemnify the undertaker against all actions, claims, demands, costs, expenses, damages or loss which may be made on or against the undertaker, which the undertaker may incur or have to pay or which it may sustain in consequence of the construction of any specified work or of the failure or want of repair of any specified work or any subsidence caused by the construction of any specified work or in consequence of any act or omission of Network Rail, its

contractors, agents, workmen or servants, whilst engaged upon any specified work and any new, altered or substituted sewer or any protective work.

(3) The undertaker shall give to Network Rail reasonable notice of any such claim or demand as is mentioned in sub-paragraph (2) and no settlement or compromise of the claim or demand shall be made without the agreement in writing of Network Rail.

(4) Nothing in sub-paragraph (1) or (2) shall impose any liability on Network Rail in respect of any damage to the extent that it is attributable to the act, neglect or default of the undertaker, its officers, servants, or, if not Network Rail, its contractors or agents.

(5) If in pursuance of the provisions of this Part of this Schedule—

(a) a sewer of better type, of greater capacity or of greater dimensions is placed in substitution for an existing sewer of worse type, of smaller capacity or of smaller dimensions except where this has been solely due to using the nearest currently available type; or

(b) a sewer (whether an existing sewer or a sewer substituted for an existing sewer) is placed at a depth greater than the depth at which the existing sewer was,

and the placing of a sewer of that type or capacity or of those dimensions or the placing of a sewer at that depth, as the case may be, is not agreed by Network Rail or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves costs in the construction of works under this Part of this Schedule exceeding that which would have been involved if the sewer placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this paragraph would be payable to the undertaker by virtue of sub-paragraph (1) shall be reduced by the amount of that excess.

(6) For the purposes of sub-paragraph (5) an extension of a sewer to a length greater than the length of an existing sewer shall not be treated as a placing of a sewer of greater dimensions than those of the existing sewer.

(7) An amount which apart from this sub-paragraph would be payable to the undertaker in respect of works by virtue of sub-paragraph (1) (and having regard, where relevant, to sub-paragraph (5)) shall, if the works include the placing of a sewer provided in substitution for a sewer placed more than 7 years and 6 months earlier so as to confer on the undertaker any financial benefit by deferment of the time for renewal of the sewer in the ordinary course, be reduced by the amount which represents that benefit.

(8) Sub-paragraphs (1) and (5) to (7) shall not apply where the authorised works constitute major transport works for the purposes of Part III of the Street Works Act, but instead—

(a) the allowable costs of the construction of works under this Part of this Schedule shall be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and

(b) the allowable costs shall be borne by Network Rail and the undertaker in such proportions as may be prescribed by any such regulations.

22.—(1) An officer of the undertaker duly appointed for the purpose may, at any reasonable time and, if required by Network Rail, under its supervision and control, enter upon and inspect any specified work or any other works constructed under this Part of this Schedule.

(2) The approval by the undertaker of any plans, drawings, sections or specifications or the supervision by it of any work under this Part of this Schedule shall not (if it was done without negligence on the part of the undertaker, its officers, servants, or, if not Network Rail, its contractors or agents) exonerate Network Rail from any liability or affect any claim for damages by the undertaker.

23.—(1) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 12 of this Order, the undertaker shall be at liberty at all times to construct and

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do all such works and things in, upon or under any such highway as may be reasonably necessary to enable it to maintain, renew, protect or use any sewer which at the time of the stopping up or diversion was in that highway.

(2) Where, in consequence of this Order, any part of any street, bridleway or footpath in which any sewer is situated ceases to be part of the street, bridleway or footpath, the undertaker may exercise the same rights of access to such sewer as it enjoyed immediately before the coming into force of this Order, but nothing in this paragraph shall affect any right of Network Rail or of the undertaker to require alteration of such sewer under this Part of this Schedule.

24. Network Rail shall, so far as is reasonably practicable, so exercise the powers conferred by article 20 of this Order as not to obstruct or render less convenient the access to any sewer.

25. As soon as reasonably practicable after the completion of the construction of any specified work Network Rail shall deliver to the undertaker a plan and section showing the position and level of that work as constructed and all new, altered or substituted works provided under this Part of this Schedule.

26. Nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between Network Rail and the undertaker in respect of any sewer or other apparatus constructed, laid or erected in land belonging to Network Rail before the coming into force of this Order.

27. Any difference arising between Network Rail and the undertaker under this Part of this Schedule shall be referred to and settled by arbitration under article 44 of this Order.

PART IV

PROTECTION FOR LAND DRAINAGE, FLOOD DEFENCE, WATER RESOURCES AND FISHERIES

28.—(1) The following provisions shall apply for the protection of the Agency unless otherwise agreed in writing between Network Rail and the Agency.

(2) In this Part of this Schedule—

“the Agency” means the Environment Agency;

“construction” includes execution, placing, altering, replacing, relaying and removal; and
“construct” and “constructed” shall be construed accordingly;

“drainage work” means any watercourse and includes any land which provides or is expected to provide flood storage capacity for a flood event with an annual probability of occurrence of 0.01 or greater for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

“fishery” means any waters containing fish and fish in, or migrating to or from, such waters and the spawn, habitat or food of such fish;

“plans” includes sections, drawings, specifications and method statements;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 16 metres of, a drainage work or is otherwise likely to—

- (a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
- (b) affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;
- (c) cause obstruction to the free passage of fish or damage to any fishery; or

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- (d) affect the conservation, distribution or use of water resources; and
- “watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows (whether or not the flow is intermittent) except a public sewer within the meaning of the Water Industry Act 1991.

29.—(1) Before beginning to construct any specified work, Network Rail shall submit to the Agency plans of the work and such further particulars available to it as the Agency may within 28 days of the submission of the plans reasonably require.

(2) Any such specified work shall not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 40.

(3) Any approval of the Agency required under this paragraph—

- (a) shall not be unreasonably withheld;
- (b) shall be deemed to have been given if it is neither given nor refused within two months of the submission of the plans for approval; and
- (c) may be given subject to such reasonable requirements as the Agency may make for the protection of any drainage work or fishery or for the protection of water resources, or for the prevention of flooding or pollution and in the discharge of its environmental and recreational duties.

30. Without prejudice to the generality of paragraph 29, the requirements which the Agency may make under that paragraph include conditions requiring Network Rail at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified work (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

31.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 30, shall be constructed—

- (a) within three years of the Agency’s approval under paragraph 29 or such longer period as the Agency may consent to at the time of the approval or upon an application by Network Rail thereafter (such consent not to be unreasonably withheld);
- (b) in accordance with the plans approved or deemed to have been approved or settled under this Part of this Schedule; and
- (c) to the reasonable satisfaction of the Agency,

and the Agency shall be entitled by its officer to watch and inspect the construction of such works.

(2) Without prejudice to any reasonable requirements of the Agency under paragraph 30 relating to protective works, if any specified work or protective work is not constructed within the period required under sub-paragraph (1)(a), Network Rail may submit to the Agency new plans of the work for further approval and the provisions of this Part of this Schedule shall apply accordingly.

(3) Network Rail shall give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is brought into use.

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(4) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Agency may by notice in writing require Network Rail, at Network Rail's own expense, to comply with the requirements of this Part of this Schedule or (if Network Rail so elects and the Agency in writing consents, such consent not to be unreasonably withheld) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(5) Subject to sub-paragraph (6) and paragraph 35, if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served upon Network Rail, it has failed to begin taking steps to comply with the requirements of the notice and thereafter to make reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any expenditure incurred by it in so doing shall be recoverable from Network Rail.

(6) In the event of any dispute as to whether sub-paragraph (4) is applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency shall not, except in emergency, exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined.

32.—(1) Subject to the provisions of this Part of this Schedule and except to the extent that the Agency or another person is liable to maintain any such work and is not precluded by the exercise of the powers of this Order from so doing, Network Rail shall from the commencement of the construction of the specified work maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation or on land held by Network Rail for the purposes of or in connection with the specified work, whether or not the drainage work is constructed under the powers of the Order or is already in existence.

(2) If any such drainage work which Network Rail is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require Network Rail to repair and restore the work, or any part thereof, or (if Network Rail so elects and the Agency in writing consents, such consent not to be unreasonably withheld), to remove the work and restore the site (including sea defences) to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to paragraph 35, if, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any work is served under sub-paragraph (2) on Network Rail, Network Rail has failed to begin taking steps to comply with the reasonable requirements of the notice and has not thereafter made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from Network Rail.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency shall not, except in a case of emergency, exercise the powers of sub-paragraph (3) until the dispute has been finally determined.

33. Subject to paragraph 35, if by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that work is otherwise damaged, such impairment or damage shall be made good by Network Rail to the reasonable satisfaction of the Agency and, if Network Rail fails to do so, the Agency may make good the same and recover from Network Rail the expense reasonably incurred by it in so doing.

34.—(1) Network Rail shall take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in any fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work, or
- (b) the failure of any such work,

damage to a fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on Network Rail requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect that fishery against such damage.

(3) Subject to paragraph 35, if within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, Network Rail fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and may recover from Network Rail the expense reasonably incurred by it in doing so.

(4) Subject to paragraph 35, in any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to a fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from Network Rail the reasonable cost of so doing provided that notice specifying those steps is served on Network Rail as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

35. Nothing in paragraphs 31 to 34 shall authorise the Agency to execute works on or affecting an operational railway forming part of Network Rail's network without the written consent of Network Rail, such consent not to be unreasonably withheld.

36. Network Rail shall indemnify the Agency in respect of all costs, charges and expenses which the Agency may reasonably incur or have to pay or which it may sustain—

- (a) in the examination or approval of plans under this Part of this Schedule; and
- (b) in the inspection of the construction of any specified work or any protective works required by the Agency under this Part of this Schedule.

37.—(1) Without prejudice to the other provisions of this Part of this Schedule, Network Rail shall indemnify the Agency from all claims, demands, proceedings, costs, damages or expenses or loss, which may be made or taken against, or recovered from or incurred by, the Agency by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any damage to a fishery;
- (c) any raising or lowering of the water table in land adjoining the authorised works or any sewers, drains or watercourses;
- (d) any flooding or increased flooding of any such land; or
- (e) inadequate water quality in any watercourse or other surface waters or in any groundwater,

which is caused by the construction of any specified work or any act or omission of Network Rail, its contractors, agents or employees whilst engaged upon the work.

(2) The Agency shall give to Network Rail reasonable notice of any such claim or demand and no settlement or compromise thereof shall be made without the agreement of Network Rail, which agreement shall not be unreasonably withheld.

38. The fact that any work or thing has been executed or done by Network Rail in accordance with a plan approved or deemed to be approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, shall not relieve Network Rail from any liability under the provisions of this Part of this Schedule.

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39. For the purposes of section 5 of the Metropolis Management (Thames River Prevention of Floods) (Amendment) Act 1879⁽³¹⁾ and Chapter II of Part II of the Water Resources Act 1991 (abstraction and impounding of water) and section 109 of that Act (as to structures in, over or under watercourses) as applying to the construction of any specified work, any consent or approval given or deemed to be given by the Agency under this Part of this Schedule with respect to such construction shall be deemed also to constitute an impounding licence under that Chapter or, as the case may be, a consent or approval under those sections, and Network Rail shall not be obliged to serve any notice which would otherwise be required by section 30 of the said Act of 1991 (which relates to the construction of boreholes and similar works in respect of which a licence is not required).

40. Any dispute arising between Network Rail and the Agency under this Part of this Schedule (other than a difference as to its meaning or construction) shall, if the parties agree, be determined by arbitration under article 44 of this Order, but shall otherwise be determined by the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Transport acting jointly on a reference to them by Network Rail or the Agency, after notice in writing by one to the other.

PART V

PROTECTION FOR BRITISH WATERWAYS BOARD

41.—(1) For the protection of BW the following provisions shall, unless otherwise agreed in writing between Network Rail and BW, have effect.

Interpretation

(2) In this Part of this Schedule—

“BW” means the British Waterways Board;

“BW’s network” means BW’s network of waterways;

“construction”, in relation to any specified work or protective work, includes—

- (a) the execution and placing of that work; and
- (b) any such replacing, relaying, removal, alteration, maintenance, repair or reconstruction of that work as may be carried out during the period of 12 months from the completion of that work,

and “construct” and “constructed” have corresponding meanings;

“detriment” means any permanent damage to a waterway or any other property of BW and, without prejudice to the generality of that meaning, includes—

- (a) the erosion of the bed or banks of a waterway or the impairment of the stability of any works, lands or premises forming part of a waterway;
- (b) the siltation of a waterway or the deposit of materials in it so as to permanently damage the waterway;
- (c) the pollution of a waterway;
- (d) any permanent alteration in the water level of a waterway, or permanent interference with the supply of water thereto, or drainage of water therefrom; and
- (e) any permanent harm to the ecology of a waterway (including any permanent adverse impact on any site of special scientific interest comprised in BW’s network);

“the engineer” means an engineer appointed by BW for the purpose in question;

(31) 1879 c. cxcviii.

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“plans” includes sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction) and programmes;

“protective work” means a work constructed under paragraph 46(3);

“specified work” means so much of any of the authorised works as is situated upon, across, under, over or within 15 metres of, or may directly and physically affect, the waterway;

“towing path” means the towing path forming part of the waterway; and

“waterway” means any canal, or inland navigation belonging to or under the management or control of BW, and includes any works, land or premises belonging to BW, or under its management or control, and held or used by BW in connection with any such canal or inland navigation.

(3) Network Rail shall not under the powers conferred by this Order acquire compulsorily any land of BW, or any easement or other right over such land other than such land, or easements or other rights over such land, as is reasonably necessary for, or in connection with, the construction, maintenance or operation of works authorised by this Order.

Powers requiring BW's consent

42.—(1) Network Rail shall not in the exercise of the powers conferred by this Order permanently obstruct or interfere with pedestrian or vehicular access to a waterway unless such permanent obstruction or interference with such access is with the consent of BW.

(2) Nothing in article 19 of this Order shall authorise Network Rail—

(a) to discharge any water directly or indirectly into a waterway, or

(b) to carry out any works to, or make any opening in, or otherwise interfere with, a waterway (including the banks and bed thereof),

except with the consent of BW and in accordance with plans approved by, and under the supervision (if given) of, the engineer.

(3) Network Rail shall not exercise the powers conferred by article 21 of this Order, or the powers conferred by section 11(3) of the 1965 Act, in relation to a waterway unless such exercise is with the consent of BW.

(4) Network Rail shall not exercise the powers conferred by section 271 or 272 of the Town and Country Planning Act 1990, as applied by Schedule 12 to this Order, so as permanently to divert any right of access to a waterway, but such right of access may be permanently diverted with the consent of BW.

(5) The consent of BW pursuant to any of sub-paragraphs (1) to (4) and the approval of plans under sub-paragraph (2) shall not be unreasonably withheld or delayed but may be given subject to reasonable conditions which in the case of article 19 may include conditions—

(a) specifying the maximum volume of water which may be discharged in any period; and

(b) authorising BW on giving reasonable notice (except in an emergency when BW may require immediate suspension) to Network Rail to require Network Rail to suspend the discharge of water or reduce the flow thereof where this is necessary by reason of any operational requirement of BW and where a reasonable alternative is available to enable Network Rail to discharge the water in question during the period of the suspension.

Vehicles, plant and machinery

43. Network Rail shall not use any land or property of BW forming part of a waterway for the passage or siting of vehicles, plant or machinery employed in the construction of the specified work other than—

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- (a) with the consent in writing of the engineer whose consent shall not be unreasonably withheld; and
- (b) subject to compliance with such reasonable requirements as the engineer may from time to time specify—
 - (i) for the prevention of detriment, or
 - (ii) in order to avoid or reduce any inconvenience to BW, its officers and agents and all other persons lawfully on such land or property.

Closure of towing paths etc.

44. If in consequence of or in connection with the exercise of the powers of this Order any part of a towing path or any public right of way giving access thereto (“the closed section”) is temporarily closed to persons on foot or on cycles and there is no way which provides a reasonable alternative, Network Rail shall, to the reasonable satisfaction of BW, provide in substitution a sufficient and convenient way as is reasonably practicable between the points of commencement and termination of the closed section for such time as the closure continues.

Fencing

45. Where so required by the engineer Network Rail shall to the reasonable satisfaction of the engineer fence off any specified work or protective work or take such other steps as the engineer may require to be taken for the purpose of separating any specified work or protective work from a waterway, whether on a temporary or permanent basis or both.

Approval of plans, protective works, etc.

46.—(1) Network Rail shall before commencing construction of any specified work including any temporary works supply to BW proper and sufficient plans of that work and such further particulars available to it as BW may within 14 days of the submission of the plans reasonably require for the approval of the engineer and shall not commence such construction of any specified work until plans of that work have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) shall not be unreasonably withheld or delayed, and if within 56 days after such plans (including any other particulars reasonably required under sub-paragraph (1)) have been supplied to BW the engineer has not intimated his disapproval of those plans and the grounds of his disapproval he shall be deemed to have approved the plans as submitted.

(3) When signifying his approval of the plans the engineer may specify—

- (a) any protective work (whether temporary or permanent) which is reasonably necessary to be carried out before the commencement of any specified work to prevent detriment; and
- (b) such other requirements as may be reasonably necessary to prevent detriment,

and such protective work shall be constructed by Network Rail with all reasonable dispatch and Network Rail shall not commence the construction of any specified work until the engineer has notified Network Rail that the protective work has been completed to his reasonable satisfaction.

Notice of works

47. Network Rail shall give to the engineer 56 days' notice of its intention to commence the construction of any specified or protective work, or, in the case of repair carried out in an emergency, such notice as may be reasonably practicable so that, in particular, BW may where appropriate arrange for the publication of notices bringing that work to the attention of users of BW's network.

Lighting

48. Network Rail shall provide and maintain at its own expense in the vicinity of any specified or protective work such temporary lighting and such signal lights for the control of navigation as the engineer may reasonably require during the construction or failure of the specified or protective work.

Construction of specified work

49.—(1) Any specified work shall, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled as aforesaid and with any requirements made under paragraph 46(3)(b);
- (b) under the supervision (if given) and, in the case of any specified work which directly and physically affects a waterway, to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little detriment as is reasonably practicable; and
- (d) in such manner as to cause as little inconvenience as is reasonably practicable to BW, its officers and agents and all other persons lawfully using the waterways.

(2) Nothing in this Order shall authorise Network Rail to make or maintain any permanent works in or over a waterway so as to impede or prevent (whether by reducing the width of the waterway or otherwise) the passage of any vessel which is of a kind (as to its dimensions) for which BW are required by section 105(1)(b) and (2) of the Transport Act 1968⁽³²⁾ to maintain the waterway.

(3) Following the completion of the construction of the specified work Network Rail shall restore the waterway to a condition no less satisfactory than its condition immediately prior to the commencement of that work.

Prevention of pollution

50. Network Rail shall not in the course of constructing any specified work or protective work or otherwise in connection therewith do or permit anything which may result in the pollution of a waterway or the deposit of materials therein and shall take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph; but this provision shall not prevent Network Rail from carrying out works to the abutment of bridges or other works within the waterway.

Access to work: provision of information

51.—(1) Network Rail shall at all times on being given reasonable notice allow reasonable facilities to the engineer for access to any specified work during its construction; but such facilities for access shall be subject to Network Rail's reasonable requirements for ensuring the safety of the railway and of the engineer and other persons working on the railway.

(2) Network Rail shall supply the engineer with all such information as he may reasonably require with regard to any specified work or the method of constructing it.

Repayment of BW's fees, etc.

52. Network Rail shall repay to BW all fees, costs, charges and expenses reasonably incurred by BW—

(32) 1968 c. 73.

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- (a) in respect of the approval by the engineer of plans submitted by Network Rail and the supervision by him of the construction or repair of any specified work and any protective work;
- (b) in respect of the employment during the period of the initial construction of any specified work or protective work of any inspectors, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, watching and lighting any waterway and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified work or any protective work; and
- (c) in bringing the specified work or any protective work to the notice of users of BW's network.

Making good of detriment: compensation and indemnity, etc.

53.—(1) If any detriment shall be caused by the construction of the specified work or the protective works, Network Rail (if so required by BW) shall make good such detriment and shall pay to BW all reasonable expenses to which BW may be put, and compensation for any loss which BW may sustain, in making good or otherwise by reason of the detriment.

(2) Network Rail shall be responsible for and make good to BW all costs, charges, damages, expenses and losses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by BW—

- (a) by reason of the construction of any specified work or protective work; or
- (b) by reason of any act or omission of Network Rail or of any person in its employ or of its contractors or others whilst engaged upon the construction of any specified work or protective work,

and subject to sub-paragraph (4), Network Rail shall effectively indemnify and hold harmless BW from and against all claims and demands arising out of any of the matters referred to in sub-paragraphs (a) and (b).

(3) The fact that any act or thing may have been done by BW on behalf of Network Rail or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision or in accordance with any directions or awards of an arbitrator shall not (if it was done without negligence on the part of BW or of any person in its employ or of its contractors or agents) excuse Network Rail from any liability under the provisions of this paragraph.

(4) BW shall give Network Rail reasonable notice of any such claim or demand as aforesaid and no settlement or compromise of such a claim or demand shall be made without the prior consent of Network Rail.

Arbitration

54. Any difference arising between Network Rail and BW under this Part of this Schedule (other than a difference as to the meaning or construction of this Part of this Schedule) shall be referred to and settled by arbitration under article 44 of this Order.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for the construction of works for the four tracking of the West Coast Main Line railway between Tamworth and Lichfield stations in the borough of Tamworth and district of Lichfield in the county of Staffordshire for the purpose of increasing the operating capacity of the railway, with the separation of road vehicles and pedestrians from the railway, together with all necessary related works and conveniences.

A copy of the deposited plans, the deposited sections and the book of reference referred to in this Order may be inspected at the offices of the Company Secretary and Solicitor to Network Rail Infrastructure Limited, 40 Melton Street, London NW1 2EE.