

2005 No. 2222

TRANSPORT AND WORKS, ENGLAND
TRANSPORT, ENGLAND

The River Tyne (Tunnels) Order 2005

Made - - - - - *5th August 2005*

Coming into force - - *26th August 2005*

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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^(a) made under sections 6, 6A, 7 and 10 of the Transport and Works Act 1992^(b) (“the Act”) and section 4 of the Tyne Tunnels Act 1998^(c) for an Order under sections 3 and 5 of the 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 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And whereas the Secretary of State, having considered the objections made and not withdrawn, and the report of the person who held the inquiry, has determined to make an Order giving effect to the proposals comprised in the application with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 of the opinion that the primary object of this Order cannot be achieved by means of an order under the Harbours Act 1964^(d);

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 2 of Schedule 3 to this Order is not required;

^(a) S.I. 2000/2190.

^(b) 1992 c. 42.

^(c) 1998 c. i.

^(d) 1964 c. 40.

And whereas notice of the Secretary of State's determination was published in *The London Gazette* on 22nd July 2005;

Now, therefore, the Secretary of State in exercise of the powers conferred on him by sections 3 and 5 of, and paragraphs 1 to 5, 7 to 13 and 15 to 17 of Schedule 1 to, the Act, section 4 of the Tyne Tunnels Act 1998 and the Transport and Works (Description of Works Interfering with Navigation) Order 1992(a), hereby makes the following Order:

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the River Tyne (Tunnels) Order 2005 and shall come into force on 26th August 2005.

Interpretation

2.—(1) In this Order—

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

“the 1976 Act” means the Tyne and Wear Act 1976(c);

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

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

“appointed day” means the date on which this Order comes into force;

“authorised activities” means the construction, carrying out and maintenance of the authorised works, the operation, use and maintenance of the tunnel crossing and the exercise of any power, authority or discretion for the time being vested in or exercisable by the undertaker under this Order or otherwise;

“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;

“building” includes any building, structure or erection or any part of a building, structure or erection;

“concessionaire” means any person with whom the undertaker enters into a concession agreement from time to time together with the successors and assigns of any such person;

“concession agreement” means a legally binding arrangement which may be comprised in one or more documents that makes provision for any or all of—

(a) the design, construction, financing, refinancing, operation and maintenance of the new tunnel;

(b) the financing, refinancing, operation and maintenance of the existing tunnels; and

(c) any other matter in respect of the tunnel crossing;

“concession toll date” means the date upon which an order made by the Secretary of State under section 13(2) of the 1976 Act as substituted by this Order revising the tolls or charges under article 42(1) in accordance with a determination of the undertaker under paragraph 4 of Schedule 14 to this Order comes into effect;

“the deposited plans” means the works plans and the land plans;

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

“the effective date” means the date upon which an order made by the Secretary of State under section 13(2) of the 1976 Act as substituted by this Order revising the tolls and charges chargeable under article 42(1) comes into effect;

(a) S.I. 1992/3230.

(b) 1965 c. 56.

(c) 1976 c. xxxvi.

(d) 1984 c. 27.

(e) 1991 c. 22.

“the existing foot tunnels” means Works Nos. 3, 3A and 4 as set out in Part I of Schedule 1 to the 1976 Act together with all approaches, tunnels, lifts, stairs, escalators, subways, passages, means of ingress or egress, shafts, stagings, buildings, apparatus, plant, machinery and subsidiary and incidental works;

“the existing tunnels” means the existing foot tunnels and the Tyne Tunnel;

“function” includes any power, authority or discretion for the time being vested in or exercisable by the undertaker under this Order, or otherwise, in relation to the tunnel crossing or any part of it or any of the authorised activities;

“highway” and “highway authority” have the same meaning as in the Highways Act 1980(a);

“land plans” means the plans certified by the Secretary of State as the land plans for the purposes of this Order;

“the limits of deviation” means the limits of deviation for the scheduled works shown on the works plans;

“the limits of land to be acquired or used” means the limits of land to be acquired or used shown on the works plans;

“maintain” includes maintain, inspect, repair, adjust, alter, remove, clear, refurbish, reconstruct, replace and improve and “maintenance” shall be construed accordingly;

“new tunnel” means the new tunnel comprised in the authorised works together with—

- (a) all tunnels, lifts, stairs, escalators, subways, passages, means of ingress or egress, shafts, stagings, buildings, apparatus, plant, machinery and subsidiary and incidental works; and
- (b) all piles, fenders, booms, dolphins, embankments, abutments, wharves, walls, fences, drains, buildings and other works and conveniences, in the River Tyne or Howdon Basin and the banks, bed and foreshore thereof,

constructed or provided in connection therewith;

“operational land” shall, in respect of the tunnel crossing, have the meaning given to it in the Town and Country Planning Act 1990(b);

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

“the Port Authority” means the Port of Tyne Authority;

“the scheduled works” means the works specified in Schedule 1 to this Order or any part of them, as the same may be varied pursuant to article 4;

“street works”, in relation to a street, has the same meaning as in Part III of the 1991 Act;

“street authority”, in relation to a street, has the same meaning as in Part III of the 1991 Act;

“subsoil” means subsoil lying more than 1 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,
- (b) in the case of a river, dock, canal, navigation, watercourse or other water area, the level of the surface of the ground nearest to it which is at all times above water level, or
- (c) in any other case, ground surface level;

“tidal work” means so much of any work as is in, on, over or under tidal waters or tidal land below the level of mean high-water springs;

“the tribunal” means the Lands Tribunal;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“tunnel area” means so much of the land lying within the limits of land to be acquired or used as is situated within the River Tyne and Howdon Basin and their banks and beds;

“tunnel crossing” means the existing tunnels and the new tunnel together with—

- (a) the tunnel roads; and

(a) 1980 c. 66.

(b) 1990 c. 8.

(b) any land not forming part of the tunnel roads which comprises operational land of the undertaker for the purposes of the tunnel crossing;

“tunnel roads” means the roads that run through the Tyne Tunnel and the new tunnel and Works Nos. 1B, 1C, 1D, 1E, 2C, 7A (part), 7B (part), 7K (part), 7L (part) and 7Q;

“Tyne Tunnel” means the existing road tunnel beneath the River Tyne and Howdon Basin between and in the Metropolitan Boroughs of North Tyneside and South Tyneside;

“the undertaker” means the Tyne and Wear Passenger Transport Authority;

“undertaking” includes the undertaking of the undertaker in connection with this Order, the authorised activities, the tunnel crossing, the functions and the property vested in the undertaker by article 3 of the Tyne Tunnel Order 1986(a); and

“works plans” means the plans certified by the Secretary of State as the works plans for the purposes of this Order.

(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, and references to the subsoil of any land include references to any cellar, basement, vault, arch or other construction forming part of any such land.

(3) Except in Part 2 of Schedule 10 to this Order, all directions, distances, areas and dimensions stated in this Order shall be construed as if the words “or thereabouts” were inserted after each such direction, distance, area and dimension.

(4) The expression “includes” shall be construed without limitation.

PART 2

WORKS PROVISIONS

Principal powers

Power to construct and maintain works

3.—(1) The undertaker may—

- (a) construct and maintain the scheduled works; and
- (b) break out and remove such structures that are contained within the limits of land to be acquired or used as may be necessary, expedient or convenient for the construction or maintenance of the scheduled works.

(2) Subject to article 4, 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) Subject to paragraph (5), the undertaker 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 and maintenance of the scheduled works.

(4) The undertaker may remove any works carried out by it pursuant to this Order which have been constructed as temporary works or which it no longer requires.

(5) Paragraph (3) shall only authorise the carrying out or maintenance of works outside the limits of deviation if the works are carried out, constructed or maintained on land contained within the limits of land to be acquired or used.

Power to deviate

4. In constructing or maintaining the scheduled works, the undertaker may—

- (a) deviate laterally from the lines or situations shown on the works plans within the limits of deviation; and
- (b) deviate vertically from the levels shown for those works on the deposited sections—
 - (i) in respect of any structure not being beneath the River Tyne or Howdon Basin to any extent not exceeding 2 metres upwards;
 - (ii) to any such extent downwards as may be necessary, convenient or expedient.

(a) S.I. 1986/298.

Power to execute street works

5.—(1) The undertaker may, for the purpose of or in connection with the authorised works, enter upon so much of any of the streets specified in Schedule 2 to this Order as is within the limits of land to be acquired or used and may—

- (a) break up or open the street, or any sewer, drain, pipe or conduit or tunnel under it, or tunnel or bore under the street;
- (b) place apparatus in the street;
- (c) maintain apparatus in the street or change its position or remove it from the street; and
- (d) execute works required for or incidental to any works referred to in sub-paragraphs (a), (b) and (c).

(2) This article is subject to paragraph 3 of Schedule 11 to this Order.

(3) In this article “apparatus” has the same meaning as in Part III of the 1991 Act.

Power to alter layout of streets

6.—(1) The undertaker may alter the layout of any street specified in columns (1) and (2) of Schedule 2 to this Order in the manner specified in relation to that street in column (2) of that Schedule.

(2) Without prejudice to the specific powers conferred by paragraph (1) but subject to paragraph (3), the undertaker may for the purpose of or in connection with the authorised works alter the layout of any street in or adjacent to which any authorised works are constructed or to be constructed and, without prejudice to the generality of the foregoing, the undertaker may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footway, cycle track or verge within the street,
- (b) alter the level of any such kerb, footway, cycle track or verge, and
- (c) reduce or increase the width of the carriageway of the street by forming a reserved area in the street as a stopping place for vehicles or by carrying out other works for that purpose.

(3) The powers in paragraph (2) shall not be exercised without the consent of the street authority, but such consent shall not be unreasonably withheld.

Stopping up of streets and extinguishments of rights

7.—(1) Subject to the provisions of this article, the undertaker may, for the purpose of or in connection with the carrying out or maintenance of the authorised works, stop up each of the streets specified in columns (1) and (2) of each Part of Schedule 3 to this order to the extent specified, by reference to the letters and numbers shown on the works plans, in column (3) of that Part.

(2) No street specified in columns (1) and (2) of Part 1 of Schedule 3 to this Order (being a street for which a substitute is to be provided) shall be wholly or partly stopped up under this article unless either—

- (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 for the passage of such traffic as could have used the street to be stopped up is first provided and thereafter maintained by the undertaker to the reasonable satisfaction of the street authority between the commencement and termination points of the street to be stopped up until the completion of the new street in accordance with sub-paragraph (a).

(3) Where a street has been stopped up under this article the undertaker may, without making any payment, appropriate and use for the purpose of or in connection with the authorised works so much of the site of the street as is bounded on both sides by land owned by the undertaker or occupied by the undertaker pursuant to the provisions of this Order.

(4) 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 Land Compensation Act 1961^(a).

(5) This article is subject to paragraph 2 of Schedule 11 to this Order.

Temporary stopping up of streets

8.—(1) The undertaker may, during and for the purpose of the carrying out or maintenance of the authorised works, 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), the undertaker may use any street stopped up under the powers of this article as a temporary working site.

(3) The undertaker 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), the undertaker may exercise the powers of this article in relation to the streets specified in columns (1) and (2) of Schedule 4 to this Order to the extent specified, by reference to the letters and numbers shown on the works plans, in column (3) of that Schedule.

(5) Save in respect of any street which is a tunnel road, the undertaker shall not exercise the powers of 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 but may be given subject to reasonable conditions.

(6) Where the street authority imposes reasonable conditions on its consent under this article the undertaker shall not exercise its powers under this article except in accordance with those conditions.

(7) Works executed under this Order in relation to a highway which consists of or includes a carriageway shall be treated for the purposes of Part III of the 1991 Act (street works) as major highway works if—

- (a) they are works of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of that Act (which defines what highway authority works are major highway works) and would have been major highway works had they been executed by the highway authority, or
- (b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64 of the Highways Act 1980^(b) (dual carriageways and roundabouts).

(8) Section 56 (directions as to timing) and section 58 (restrictions following substantial road works) of the 1991 Act shall not apply in relation to any works executed under the powers of this Order.

(9) The provisions of the 1991 Act mentioned in paragraph (10) 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 the undertaker 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 the undertaker.

(a) 1961 c. 33.

(b) 1980 c. 66.

(10) The provisions of the 1991 Act referred to in paragraph (9) 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.

Access to works

9. The undertaker may, for the purpose of or in connection with the authorised works, form and lay out means of access or improve existing means of access in or near to the locations within the limits of land to be acquired or used shown on the deposited plans or listed in Schedule 5, within the boundaries of the street in question, as the undertaker reasonably requires for the purpose of or in connection with the authorised activities and as may be approved by the highway authority, but such approval shall not be unreasonably withheld.

Construction and maintenance of new or altered streets

10.—(1) Subject to paragraph (5), any street to be constructed under this Order and not comprised within the tunnel crossing shall be completed to the reasonable satisfaction of the highway authority and shall, unless otherwise agreed, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the highway authority.

(2) Subject to paragraph (5), where a street not comprised within the tunnel crossing 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 the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(3) Nothing in this article shall prejudice the operation of section 87 of the 1991 Act (prospectively maintainable highways) and the undertaker 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.

(4) Nothing in this article shall have effect in relation to street works in respect of which the provisions of Part III of the 1991 Act apply.

(5) Nothing in this article shall operate to cause any street comprised in the tunnel crossing to be dedicated as highway unless the undertaker shall so elect.

(6) Notwithstanding anything contained in the Highways Act 1980 or the 1991 Act or in any other enactment, no person shall enter upon, break up or interfere with any of the tunnel roads or the carriageways, footways and verges of the same for the purpose of placing, laying down or doing anything in relation to any main pipe or wire or other apparatus or executing any work therein, thereon or thereunder, except with the consent of the undertaker and in accordance with such terms and conditions as the undertaker may determine.

Agreements with street authorities

- 11.—(1) A street authority and the undertaker 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 or any part of the tunnel crossing) 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 or any part of the tunnel crossing;
 - (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 articles 5 to 10.

- (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 payments and otherwise as the parties consider appropriate.

Trunk roads

12.—(1) On the date on which the roads comprised in Works Nos. 7U and 7V are open for public use those roads shall become trunk roads as if they had become so by virtue of an order under section 10(2) of the Highways Act 1980 specifying that date as the date on which they were to become trunk roads.

(2) Subject to paragraph (3), any power under the 1984 Act to make an order or to give a direction with respect to the roads comprised in Works Nos. 7U and 7V shall be exercisable by the Secretary of State as if he were the traffic authority before that road is open for public use in any case where it appears to the Secretary of State to be expedient that the order or (as the case may be) the direction should have effect immediately the road becomes open for public use.

(3) The procedure otherwise applicable under the 1984 Act in relation to the making of any such order or the giving of any such direction shall apply in any such case with such modifications as the Secretary of State may determine; and he shall publish notice of these modifications in such manner as appears to him to be appropriate for bringing them to the notice of persons likely to be affected by the provisions of any such order or (as the case may be) by any such direction.

Supplemental powers

Discharge of water

13.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water for the purpose of or in connection with the authorised activities and for that purpose may lay down, take up and alter pipes and may, on any land shown within the limits of land to be acquired or used, make openings into, and connections with, a watercourse, public sewer or drain.

(2) The undertaker shall not discharge any water into any watercourse, public sewer or drain except with the consent of the authority to which it belongs and in the case of the River Tyne and Howdon Basin with the consent of the Port Authority; 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) The undertaker shall not make any opening into a 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) Notwithstanding the provisions of paragraph (1) or any consent given under paragraph (2) the undertaker shall not discharge water, whether directly or indirectly, into any public sewer or drain until it shall have implemented to the reasonable satisfaction of the authority to whom such public sewer or drain belongs such measures as are necessary in the reasonable opinion of that authority to avoid any adverse impact upon the undertaking of the authority.

(5) The undertaker shall take such steps as are reasonably practicable to secure that any water discharged into a watercourse, 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 and in the case of water, not being domestic sewage, discharged directly or indirectly into a public sewer or drain from the tunnel crossing, shall secure that it is free from any such substance or matter.

(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(a).

(a) 1991 c. 57.

(7) In this article—

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

Safeguarding works to buildings

14.—(1) Subject to the following provisions of this article, the undertaker may at its own expense and from time to time carry out safeguarding works to any building lying within the limits of land to be acquired or used.

(2) Safeguarding works may be carried out—

- (a) at any time before or during the construction in the vicinity of the building of any part of the authorised works; or
- (b) after the completion of that part of the authorised works, at any time up to 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 the undertaker may enter and survey any building falling within paragraph (1) and any land belonging to it.

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

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

(5) Before exercising a right—

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

the undertaker 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 the right and, in a case falling within sub-paragraph (a) or (c), specifying the safeguarding 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 of whether it is necessary or expedient to carry out the safeguarding works or to enter the building or land to be referred to arbitration under article 54.

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

(8) Where—

- (a) safeguarding works are carried out under this article to a building, and
- (b) within the period of 5 years beginning with the day on which the part of the authorised

works constructed within the vicinity of the building is first opened for use it appears that the safeguarding works are inadequate to protect the building against damage caused by the construction or operation of that part of the works,
the undertaker shall compensate the owners and occupiers for any damage sustained by them.

(9) Subject to article 53, nothing in this article shall relieve the undertaker 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 Land Compensation Act 1961(a).

(11) In this article “safeguarding works”, in relation to a building, means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the authorised works;
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the authorised works; and
- (c) any works the purpose of which is to secure the safe operation and use of the tunnel crossing or to prevent or minimise the risk of such operation and use being disrupted.

Planning permission: supplementary matters

15. Planning permission which is deemed by virtue of a direction under section 90(2A) of the Town and Country Planning Act 1990(b) to be granted in relation to work authorised by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of that Act.

Power to survey and investigate land

16.—(1) The undertaker may for the purposes of this Order—

- (a) survey or investigate any land shown within the limits of land to be acquired or used which may be affected by the authorised activities;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions as the undertaker thinks fit on the 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 archaeological investigation on any such land;
- (d) place or leave on, in, under or over and remove from the land included in sub-paragraph (a) apparatus for use in connection with the exercise of any of the powers conferred by sub-paragraph (a) or (b); and
- (e) enter on the land referred to in sub-paragraph (a) for the purpose of exercising the powers conferred by sub-paragraph (a), (b), (c) or (d).

(2) No land may be entered, or equipment placed or left on or removed from 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 the undertaker—

- (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 exercise any of the powers conferred by paragraph (1).

(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) The undertaker shall pay 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 Land Compensation Act 1961(c).

(a) 1961 c. 33.

(b) 1990 c. 8.

(c) 1961 c. 33.

Additional powers

17.—(1) Subject to Part 3 of Schedule 10 to this Order but otherwise without prejudice to the other powers conferred by this Order or otherwise available to it, the undertaker may within the tunnel area for the purpose of or in connection with the carrying out and maintenance of the authorised works to be carried out within the tunnel area and notwithstanding any interference thereby with any public or private rights—

- (a) alter, relocate or replace any tidal work,
- (b) carry out excavations and clearance, dredging, deepening, dumping and pumping operations,
- (c) subject to article 48, sell, use, appropriate and dispose of any materials (including liquids) obtained by it in carrying out any such operations,
- (d) remove or relocate any mooring,
- (e) remove and relocate any vessel or structure sunk, stranded or abandoned or moored or left (whether lawfully or not),
- (f) temporarily moor or anchor vessels and structures,
- (g) temporarily alter, interfere with, occupy and use the banks, bed, foreshores, waters and walls of the River Tyne and Howdon Basin, and
- (h) construct, place, maintain and remove temporary works and structures,

in such manner and to such extent as may appear to it to be necessary or convenient.

(2) Except in the case of urgency, the undertaker will use reasonable endeavours to notify the owner of any mooring and the owner or master of any vessel or structure affected by the proposal to exercise the powers of paragraph (1)(d) or (e) before the exercise of that power.

Prohibitions within the tunnel area

18.—(1) Notwithstanding anything in any other enactment or rule of law but subject to the provisions of this article, the Port Authority shall, at the reasonable request of the undertaker and at the undertaker's expense, by direction close the whole or any part of the tunnel area to navigation by all vessels or by any class of vessel.

(2) Subject to paragraph (3), a direction under paragraph (1) shall specify the duration of the closure, the part of the River Tyne and Howdon Basin affected and the vessels to which it applies.

(3) The duration of a closure under this article may be extended by the Port Authority until it is satisfied (acting reasonably) that any navigation channel to be opened following the closure has adequate depth and is free of obstruction.

(4) A person may not, without the written consent of the Port Authority, within any part of the tunnel area, during a period when it is closed to navigation under this article—

- (a) navigate any vessel or cause or permit a vessel to be moored if the vessel concerned is subject to the closure,
- (b) lay down or place any mooring or apparatus, including mains, sewers, drains and cables, or
- (c) undertake or cause or permit any other operation or activity,

unless he does so in compliance with any direction which the Port Authority has given either in an emergency or for naval or military operational requirements which the Port Authority is satisfied it is not reasonably practicable to fulfil at any other time.

(5) Any person who contravenes the requirements of paragraph (4) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) Except in an emergency, the Port Authority shall at the undertaker's expense publish notice of any direction given under paragraph (1) in at least one local newspaper circulating in the area in which the tunnel crossing is situated, not less than 14 days before the direction is to take effect.

(7) In making a direction pursuant to paragraph (1), the Port Authority shall ensure that no more of the tunnel area is closed to navigation at any time by all vessels, or by any class of vessel, than is at that time necessary in the circumstances.

(8) If complete closure of the tunnel area to all vessels or to any particular class of vessels is necessary at any time, the undertaker shall secure that any work of construction or maintenance of the new tunnel shall be carried out as soon as reasonably practicable to ensure that the minimum obstruction, delay or interference is caused to vessels which may be using or intending to use the tunnel area.

(9) Without prejudice to the provisions of article 22 neither the undertaker nor the Port Authority shall be liable for any costs, damages or expenses whatsoever incurred by any person as a result, directly or indirectly, of any closure of the tunnel area under this article.

(10) A direction given under this article may be varied or revoked by a subsequent direction given under this article.

Protection of tunnel, etc.

19.—(1) A person may not without the consent of the undertaker use, for any purpose, any part of the authorised works.

(2) A person may not, without the consent in writing of the undertaker—

(a) interfere with any part of the authorised works; or

(b) remove, move or otherwise interfere with any such work or any machinery, apparatus, tools or other things in use or intended for use in connection with the authorised activities,

and to the extent that any activity within sub-paragraph (a) or (b) affects a tidal work the consent in writing of the Port Authority shall also be required, provided that this paragraph shall not require the undertaker to obtain the consent of the Port Authority except in accordance with Part 3 of Schedule 10 to this Order.

(3) Any consents required under this article may be given subject to conditions.

(4) A person who without reasonable excuse contravenes paragraph (1) or (2), or fails to comply with any conditions attached to a consent given by the undertaker or the Port Authority under paragraph (3), shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Restriction on mooring of vessels, etc.

20.—(1) During the period of the construction of the new tunnel, a person who is not engaged in the construction of the authorised works shall not, without the consent in writing of the Port Authority and the undertaker (which consent may be given subject to conditions), moor any vessel or place any article over or on the bed of the river within the tunnel area; and after that period, a person shall not within the exclusion zone—

(a) so moor without the consent of the Port Authority; or

(b) so place without the consent of the Port Authority and the undertaker.

(2) In this article “exclusion zone” means so much of the River Tyne as is bounded by imaginary parallel straight lines drawn at a distance of 40 metres on either side of the centre line of the new tunnel.

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

21.—(1) The undertaker may acquire compulsorily so much of the land shown on the land plans within the limits of land to be acquired or used and described in the book of reference as may be required for the purpose of or in connection with the authorised works and may use any land so acquired for those purposes or for purposes in connection with or ancillary to its undertaking.

(2) This article is subject to articles 25(2) and 27(8).

Application of Part I of the Compulsory Purchase Act 1965

22.—(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 and, in respect of section 10 of the 1965 Act, to the appropriation of any land owned or acquired by the undertaker (including land acquired by agreement)—

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

23.—(1) The undertaker may compulsorily acquire such easements or other rights over any land referred to in paragraph (1) of article 21 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 7 to this Order), where the undertaker acquires a right over land under paragraph (1) the undertaker shall not be required to acquire a greater interest in it.

(3) Schedule 7 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.

Power to acquire subsoil only

24.—(1) The undertaker may compulsorily acquire so much of the subsoil of the land referred to in paragraph (1) of article 21 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 the undertaker acquires any part of, or rights in, the subsoil of land under paragraph (1) the undertaker shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) shall not prevent section 8 of the 1965 Act or article 30 from applying where the undertaker acquires a cellar, vault, arch, basement or other construction forming part of a house, building or factory.

Cases where powers of acquisition limited to subsoil

25.—(1) The article applies to the land specified in Schedule 6 to this Order.

(2) In the case of land to which this article applies, the undertaker's powers of compulsory acquisition under article 21 shall be limited to the acquisition of, or of rights in, so much of the subsoil as may be required for the purposes of the authorised works.

(3) Where the undertaker acquires any part of, or rights in, the subsoil of the 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.

(a) 1981 c. 67.

Vesting declarations

26.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981^(a) shall apply as if this Order were a compulsory purchase order.

(2) In its application by virtue of paragraph (1), the Compulsory Purchase (Vesting Declarations) Act 1981 shall have effect with the following modifications.

(3) In section 3 (preliminary notices) for subsection (1) there shall be substituted—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority shall include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession), and
- (b) published in *The London Gazette* and in a local newspaper circulating in the area in which the land is situated.”

(4) In that section, in subsection (2), for “(1)(b)” there shall be substituted “(1)” and after “given” there shall be inserted “and published”.

(5) In that section, subsections (5) and (6) shall be omitted and at the end there shall be substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) he is for the time being entitled to dispose of the fee simple of the land, whether in possession or reversion; or
- (b) he holds, or is entitled to the rents and profits of the land under a lease or agreement, the unexpired term of which exceeds one month.”

(6) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after “publication” there shall be inserted “in *The London Gazette* or in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) shall be omitted.

(7) In section 7 (constructive notice to treat) in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” shall be omitted.

(8) References to the 1965 Act shall be construed as references to that Act as applied to the acquisition of land under article 21(1).

Temporary possession of land

Temporary use of land for construction of works

27.—(1) The undertaker may, for the purpose of or 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 8 to this Order for the purposes specified in relation to that land in column (3) of that Schedule relating to the authorised works;
- (b) remove any buildings and vegetation from that land; and
- (c) construct temporary works (including the provision of means of access) and buildings on the land.

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

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of the land under this article after the end of the period of two years beginning with the date of completion of the authorised works.

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

(a) 1981 c. 66.

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

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

(7) Without prejudice to article 53, nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5).

(8) The powers of compulsory acquisition of land conferred by this Order shall not apply in relation to the land referred to in paragraph (1) except that the undertaker shall not be precluded from—

- (a) acquiring new rights over any part of that land under article 23; or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 24.

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

Temporary use of land for maintenance of works

28.—(1) At any time during the maintenance period relating to any of the authorised works, the undertaker may—

- (a) enter upon and take temporary possession of any land within the limits of land to be acquired or used if such possession is reasonably required for the purpose of or in connection with maintaining the authorised works;
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) shall not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

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

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary for the purpose for which the possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker 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 Land Compensation Act 1961.

(8) Without prejudice to article 53, 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) Where the undertaker takes possession of land under this article, it shall not be required to acquire the land or any interest in it.

(10) In this article "the maintenance period", in relation to any authorised work means the period of 5 years beginning with the date on which such authorised work is opened for use.

(a) 1961 c. 33.

Disregard of certain interests and improvements

29.—(1) In assessing the compensation (if any) payable to any person on the compulsory 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 the 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 the intention of 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 of certain properties

30.—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 22) 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 the undertaker 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 the undertaker agrees to take the land subject to the counter-notice, be referred to the tribunal.

(5) If on such a reference the tribunal determines 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 determines 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 reference the tribunal determines 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 the undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker agrees to take the land subject to the counter-notice, or if the tribunal determines 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 the undertaker 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, the undertaker 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 part only of a house, building or factory or of land consisting of a house with a park or garden, the undertaker 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.

Extinguishment and suspension of private rights of way

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

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

whichever is sooner.

(2) All private rights of way over land owned by the undertaker which, being within the limits of land to be acquired or used, is required for the purposes of this Order shall be extinguished on the appropriation of the land for any of those purposes by the undertaker.

(3) All private rights of way over land of which the undertaker takes temporary possession under this Order shall be suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(4) Any person who suffers loss by the interference with 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 Land Compensation Act 1961.

(5) 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(a) (extinguishment of rights of statutory undertakers etc.) or paragraph 2 of Schedule 11 to this Order applies.

Use of subsoil

32.—(1) The undertaker may enter upon, take and use so much of the subsoil of any street within the limits of deviation or within the land the subject of article 21(1) as may be required for the purpose of the construction or maintenance of the authorised works without being required to acquire that subsoil or any right therein.

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

(a) 1990 c. 8.

(3) 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 the undertaker 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 Land Compensation Act 1961(a).

(4) Paragraph (2) shall not apply to—

- (a) any subway or underground building; or
- (b) any cellar, vault, basement, arch or other construction in or on a street which forms part of a building fronting onto, or abutting or lying under, the street.

(5) Compensation shall not be payable under paragraph (3) to any person who is a statutory undertaker to whom section 85 of the 1991 Act applies, in respect of measures of which the allowable costs are to be borne in accordance with that section.

Noise Insulation Regulations

33. The Noise Insulation Regulations 1973(b) shall apply to the authorised works as if they were works that were carried out to construct or alter a highway and as if the undertaker were the appropriate highway authority in respect of such works to that highway and the undertaker shall be subject to such duties and have the benefit of such powers as if it were the appropriate highway authority under those regulations.

Time limit for exercise of powers of acquisition

34.—(1) Subject to paragraph (2), the powers conferred by this Order to acquire land or rights over land compulsorily, and the power conferred by article 27 to enter upon and take temporary possession of land, shall cease at the end of the period of 5 years beginning on the appointed day.

(2) Paragraph (1) shall not prevent the undertaker remaining in possession of land in accordance with article 27 after the end of that period, if the land was entered and possession of it was taken before the end of that period.

PART 4

OPERATIONAL

Power to operate, use and maintain the tunnel crossing

35. The undertaker may operate, use and maintain the tunnel crossing.

Closing the tunnel crossing

36.—(1) The undertaker may whenever in its opinion it is necessary to do so whether in case of emergency or for the purpose of or in connection with the authorised activities close any of the tunnel roads or the existing foot tunnels whether wholly or partially.

(2) Where the undertaker proposes to close any of the tunnel roads it shall except in an emergency—

- (a) give not less than 7 days' notice by advertisement in at least one local newspaper circulating in the area; and
- (b) throughout the period of such closure display signs at convenient situations on the roads communicating with any public access road to the tunnel crossing giving warning of the closure.

(a) 1961 c. 33.

(b) S.I. 1973/1363.

No mains or pipes

37.—(1) Subject to paragraph (2), notwithstanding anything contained in the Highways Act 1980(a) or in any other enactment no person shall enter upon, break up or interfere with Works Nos. 3A, 4A, 5 or 6A or the carriageways and footways of the same for the purpose of laying down any main, pipe or wire or executing any work therein, thereon or thereunder, except with the consent of the undertaker and in accordance with such terms or conditions and subject to such charges as the undertaker may determine.

(2) The consent of the undertaker to the breaking up of and interference with any of the said works or the carriageways and footways of the same for the purposes of laying down water mains, water pipes or electric lines therein shall not be withheld unreasonably and any question which may arise as to whether such consent is so withheld or as to whether the terms and conditions subject to which any such consent is given are reasonable shall be resolved by an arbitrator under article 54.

Obstruction of works and trespass on the tunnel crossing

38.—(1) Any person who, without reasonable excuse, obstructs another person from constructing any of the authorised works under the powers conferred by this Order shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Any person who—

- (a) trespasses on the tunnel crossing, or
- (b) trespasses upon any land of the undertaker in dangerous proximity to the tunnel crossing or to any electrical or other apparatus used for or in connection with the operation of the tunnel crossing,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) No person shall be convicted of an offence under paragraph (2) of this article unless it is shown that a notice warning the public not to trespass upon the tunnel crossing was clearly exhibited and maintained near to the place where the offence is alleged to have been committed or the place at which the trespass upon the tunnel crossing or land is alleged to have begun.

(4) If the tolls payable by any person desirous of using the tunnel crossing be demanded of him before using the same, and such person shall, after demand from him of such tolls (such demand being made by any collector or other person appointed to receive the same), refuse or without reasonable excuse neglect to pay the same or any part thereof, the collector or other person so appointed may refuse to permit the person so in default to use the tunnel crossing and may, by himself, or with such assistance as he shall think necessary, stop and prevent the person so in default from using the same.

Traffic control

39.—(1) The undertaker may for the purpose of or in connection with the authorised activities, place or maintain traffic signs of a type prescribed by regulations made under section 64(1)(a) of the 1984 Act or of a character authorised by the Secretary of State on or near any street leading to or from the tunnel crossing.

(2) The undertaker—

- (a) shall consult with the traffic authority as to the placing of signs, and
- (b) unless the traffic authority are unwilling to do so and subject to any directions given under section 65 of the 1984 Act, shall enter into arrangements with the traffic authority for the signs to be placed and maintained by the traffic authority.

(3) Any power conferred by section 65 of the 1984 Act to give directions to a traffic authority or local traffic authority as to traffic signs shall include a power to give directions to the undertaker as to traffic signs under this article; and, accordingly, the powers conferred by paragraph (1) shall be exercisable subject to and in conformity with any directions given under that section.

(a) 1980 c. 66.

(4) A traffic authority or other authority having power under or by virtue of the 1984 Act to place and maintain, or cause to be placed and maintained, traffic signs on or near any street leading to or from the tunnel crossing shall consult with the undertaker as to the placing of any traffic sign which would affect the operation of the tunnel crossing.

(5) Expressions used in this article and in the 1984 Act shall have the same meaning in this article as in that Act.

Power to contract for police services

40.—(1) Agreements may be made between the undertaker and the chief officer of police of any police force and the police authority for making available to the undertaker for the purpose of or in connection with the authorised activities the services of members of the police force.

(2) Any such agreement may be made on such terms as to payment or otherwise, and subject to such conditions, as may be specified in the agreement.

(3) In this article “chief officer of police”, “police authority” and “police force” have the same meaning as in the Police Act 1996(a).

Power to make byelaws

41.—(1) The undertaker may make and enforce byelaws regulating the use and operation of the tunnel crossing, the maintenance of order on and about the tunnel crossing or other facilities provided in connection with the tunnel crossing and the conduct of all persons including employees of the undertaker while on and about the tunnel crossing.

(2) Without prejudice to the generality of paragraph (1), byelaws under this article may make provision—

- (a) with respect to the payment of tolls and the evasion of payment of tolls;
- (b) with respect to interference with, or obstruction of, the operation of the tunnel crossing or other facilities provided in connection with the tunnel crossing;
- (c) with respect to the prevention of nuisances on the tunnel crossing;
- (d) for the recovery, safe custody and re-delivery or disposal of any property or vehicles left in the tunnel crossing and for fixing the charges made in respect of any such property or vehicles;
- (e) to prohibit vehicles from stopping or remaining at rest in prescribed places on the tunnel roads or elsewhere in or about the tunnel crossing, except in prescribed circumstances;
- (f) to require any person in charge of a vehicle which is at rest by reason of breakdown in a prescribed place on any of those roads to take prescribed steps for reporting that fact and the position and circumstances in which the vehicle is at rest;
- (g) to prohibit any person, other than a constable or an appointed person—
 - (i) from carrying out, or attempting to carry out, a repair, adjustment or refuelling of such a vehicle except with permission expressly given by a constable or an appointed person, and
 - (ii) from moving, or attempting to move, such a vehicle from the position in which it is at rest;
- (h) to prohibit persons from carrying out, or attempting to carry out, a repair, adjustment or refuelling of a vehicle except in prescribed circumstances;
- (i) to empower a constable or an appointed person to remove from its position to a prescribed area a vehicle which is for the time being at rest in a prescribed place on any of the roads to which the byelaws relate—
 - (i) in contravention of the byelaws,
 - (ii) by reason of breakdown,
 - (iii) without any person being in charge of it, or
 - (iv) with the person in charge of it not being present in or on it;
- (j) in the case of a vehicle which is so removed or which at the request of the person in

(a) 1996 c. 16.

- charge of it is repaired, adjusted or refuelled (instead of being removed) by an appointed person, to require the prescribed person to pay a charge of an amount to be determined in accordance with such scales and other provisions as may be prescribed;
- (k) to prohibit a person from obstructing any action taken by a constable or an appointed person for the purpose of removing a vehicle in accordance with the byelaws;
 - (l) to regulate traffic and the speed of traffic in the tunnel crossing;
 - (m) to ensure the safety of vehicles passing through the tunnel crossing and to prohibit smoking or the use of exposed flames;
 - (n) to restrict and regulate the passage of dangerous goods or traffic through the tunnel crossing;
 - (o) for regulating the passage of bicycles and other vehicles on ways and other places intended for the use of persons on foot within the tunnel crossing; and
 - (p) for prohibiting or restricting the placing or leaving of any vehicle without its driver on any part of the tunnel crossing.
- (3) (a) Byelaws under this article may—
- (i) designate places within the tunnel crossing at which tolls (other than tolls with respect to which a prepayment has been made) are to be paid;
 - (ii) make provision as to the persons by whom, and the manner in which, such tolls are to be paid;
 - (iii) make provision for securing that vehicles in respect of which tolls are payable do not use the tunnel crossing without payment of the tolls; and
 - (iv) make provision for preventing a vehicle which, having used the tunnel crossing, has arrived at the place at which a toll is payable in respect of it from proceeding beyond that place without a toll having been paid.
- (b) Byelaws made under this article shall provide for a notice specifying—
- (i) the categories of vehicles in respect of which tolls are payable, and
 - (ii) the amount of the tolls in respect of each category to be displayed at each place designated in accordance with paragraph (3)(a)(i).
- (4) Byelaws under this article may provide for it to be an offence for a person to contravene, or to fail to comply with, a provision of the byelaws and for such a person to be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) Without prejudice to the terms of paragraph (4) where the undertaker considers it expedient to do so it may prosecute legal proceedings in respect of offences under this Order, or any other legislation which applies to the tunnel or would have applied to the tunnel had it been a highway, as if it were a highway.
- (6) Without prejudice to the provisions of paragraph (4) a person who without reasonable excuse—
- (a) refuses or fails to pay a toll for which he is liable, or
 - (b) attempts to evade payment of such a toll,
- shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (7) Without prejudice to the taking of proceedings for an offence included in byelaws by virtue of paragraph (4), if the contravention of, or failure to comply with, any byelaw under this article is attended with danger or annoyance to the public or the undertaker or hindrance to the undertaker in the operation of the tunnel crossing, the undertaker may summarily take action to obviate or remove the danger, annoyance or hindrance.
- (8) Byelaws under this article shall not come into operation until they have been confirmed by the Secretary of State.
- (9) At least 28 days before applying for any byelaws to be confirmed under this article, the undertaker shall publish in such manner as may be approved by the Secretary of State a notice of its intention to apply for the byelaws to be confirmed and of the place at which and the time during which a copy of the byelaws will be open to public inspection; and any person affected by any of the byelaws may make representations on them to the Secretary of State within a period specified in the notice, being a period of not less than 28 days.

(10) For at least 24 days before an application is made under this article for byelaws to be confirmed, a copy of the byelaws shall be kept at the principal office of the undertaker and shall at all reasonable hours be open to public inspection without payment.

(11) The undertaker shall, at the request of any person, supply him with a copy of any such byelaws on payment of such reasonable sum as the undertaker may determine.

(12) The Secretary of State may confirm with or without modification, or may refuse to confirm, any of the byelaws submitted under this article for confirmation and, as regards any byelaws so confirmed, may fix a date on which the byelaws shall come into operation; and if no date is so fixed the byelaws shall come into operation after the expiry of 28 days after the date on which they were confirmed.

(13) The Secretary of State may charge the undertaker such fees in respect of any byelaws submitted for confirmation under this article as he may consider appropriate for the purpose of defraying any administrative expenses incurred by him in connection therewith.

(14) A copy of the byelaws when confirmed shall be printed and deposited at the principal office of the undertaker and shall at all reasonable hours be open to public inspection without payment, and the undertaker shall, at the request of any person, supply him with a copy of any such byelaws on payment of such reasonable sum as the undertaker shall determine.

(15) The production of a printed copy of byelaws confirmed under this article on which is endorsed a certificate purporting to be signed by a person duly authorised by the undertaker stating—

- (a) that the byelaws were made by the undertaker,
- (b) that the copy is a true copy of the byelaws,
- (c) that on a specified date the byelaws were confirmed by the Secretary of State, and
- (d) the date when the byelaws came into operation,

shall be *prima facie* evidence of the facts stated in the certificate.

(16) The provisions of the Road Traffic Offenders Act 1988(a) in relation to evidence shall apply to the prosecution of offences under this provision.

(17) Until such time as byelaws made pursuant to this article have been confirmed by the Secretary of State and have come into operation such byelaws as have previously applied to the Tyne Tunnel and the existing foot tunnels shall apply to and be enforceable in respect of the tunnel crossing.

(18) Byelaws made under this article may be varied or revoked by subsequent byelaws and byelaws made under this article may also vary or revoke any byelaws made under any other provision in respect of the tunnels comprised in the tunnel crossing at any time.

(19) In this article—

“appointed person” means a person appointed by the undertaker who may only act as such when wearing a uniform of a description approved by the undertaker;

“breakdown” in relation to a vehicle, includes mechanical defect, lack of fuel, oil or water required for the vehicle, and any other circumstances in which a person in charge of the vehicle could not immediately, safely and without damage to the vehicle or its accessories, drive it under its own power away from the tunnel crossing; and

“prescribed” means prescribed by byelaws under this Order.

PART 5

CONCESSION AND FINANCING ARRANGEMENTS

Power to charge tolls

42.—(1) Subject to paragraph (2), the undertaker may charge tolls or charges for the passage of vehicles through the tunnel crossing or for any other services or facilities provided in connection with the tunnel crossing.

(2) The undertaker shall not have power to charge tolls or charges in respect of the existing foot tunnels.

(a) 1988 c. 53.

(3) The power to charge tolls or charges referred to in paragraph (1) of this article shall include the power to charge, set, demand, take, recover and waive tolls or charges and the power to suspend the charging of tolls or charges.

(4) The power to charge tolls or charges shall commence—

- (a) with the appointed day, as respects the Tyne Tunnel; and
- (b) with the day on which the new tunnel is first open for public use, as respects the Tyne Tunnel and the new tunnel together.

(5) Where tolls payable under or by virtue of this Order remain unpaid after they have become due for payment, the person to whom they are payable may recover from the person liable to pay them the amount of the tolls together with all other reasonable costs and expenses including administrative expenses, enforcement expenses and interest arising out of any such failure to pay.

(6) The undertaker may appoint any person to collect tolls as its agent.

(7) Schedule 14 shall have effect and the tolls chargeable in respect of any vehicle or class of vehicles shall be determined and revised in accordance with Part 1 of that Schedule and section 13 of the 1976 Act as amended by this Order.

(8) The undertaker may enter into agreements under which persons make payments in advance, on such terms as may be agreed, with respect to tolls for use of the existing tunnels or the new tunnel by those or other persons or by any vehicles.

(9) Agreements under paragraph (8) may relate to use on an agreed number of occasions or during an agreed period.

(10) Toll and charges may not be charged in respect of—

- (a) a vehicle being used in the discharge of the functions of a fire authority under the Fire and Rescue Services Act 2004(a) or which would otherwise be an exempt vehicle under paragraphs 4 and 5 of Schedule 2 to the Vehicle Excise and Registration Act 1994(b);
- (b) a vehicle being used for police purposes;
- (c) a vehicle exempt from duty under the Vehicles Excise and Registration Act 1994 by virtue of section 7(4) of that Act (civil defence vehicles);
- (d) a vehicle exempt from duty under the Vehicles Excise and Registration Act 1994 under paragraphs 6 to 8 of Schedule 2 to that Act (ambulances);
- (e) a vehicle being driven by a disabled person, or being used for the carriage of one or more disabled persons, which displays a current disabled person's badge issued under—
 - (i) section 21 of the Chronically Sick and Disabled Persons Act 1970(c), or
 - (ii) section 14 of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978(d), orwhich has been issued with a token or permit to like effect by the undertaker;
- (f) a vehicle being used in connection with—
 - (i) the collection of tolls; or
 - (ii) the maintenance, improvement or renewal of, or other dealing with, the tunnel crossing or any structure, works or apparatus in, on, under or over any of the tunnel crossing;
- (g) a vehicle used for naval, military or air force purposes, while being driven by persons subject to the orders of a member of the armed forces of the Crown;
- (h) a vehicle which, having broken down in the tunnel crossing while travelling in one direction, is travelling in the opposite direction otherwise than under its own power; or

(a) 2004 c. 21.

(b) 1994 c. 42, as amended by the Fire and Rescue Services Act 2004.

(c) 1970 c. 44.

(d) 1978 c. 53.

- (i) a public service vehicle as defined in the Public Passenger Vehicles Act 1981^(a) which is being used in the provision of a local service as defined in section 2 of the Transport Act 1985^(b).

(11) The tolls charged in accordance with this article to be demanded, taken and recovered may be applied by the undertaker—

- (a) in paying the costs and expenses incurred in designing, constructing, managing, operating and maintaining the tunnel crossing or any costs associated with financing any of the same;
- (b) in providing such funds as are or are likely to be necessary to discharge the obligations of the undertaker pursuant to a concession agreement;
- (c) in paying the interest on, and repaying the principal of, monies borrowed in respect of the existing tunnels;
- (d) in making payment into any maintenance or reserve fund provided in respect of the tunnel crossing;
- (e) in making grants to the passenger transport executive for the Metropolitan area of Tyne and Wear;
- (f) in making payments to the undertaker's general fund for the purpose of directly or indirectly facilitating the achievement of policies relating to public transport in its local transport plan, or for other purposes; and
- (g) in providing funds for, meeting expenses incurred in, or the cost of securing any necessary authority or consent for, and in constructing or in securing the construction, maintenance and operation of, the new tunnel.

(12) The undertaker shall not apply any of the tolls for the purposes mentioned in subparagraphs (e) to (g) of paragraph (11)—

- (a) in a manner that would contravene Directive 1999/62/EC of the European Parliament and of the Council of 17th June 1999^(c) on the charging of heavy goods vehicles for the use of certain infrastructure; or
- (b) unless it is satisfied that it has applied for the purposes of paragraphs (a) to (d) of that paragraph sufficient funds to ensure the safe, efficient and economic management, operation and maintenance of the tunnel crossing in accordance with all applicable statutory requirements.

Power to enter in to concession agreements and lease or transfer the undertaking etc.

43.—(1) The undertaker may, on such terms as it sees fit, at any time and for any period, enter into one or more concession agreements and for that purpose may provide for the exercise of the powers of the undertaker in respect of the authorised activities or any part thereof, together with the rights and obligations of the undertaker in relation thereto.

(2) The exercise by the undertaker of its rights under paragraph (1) shall not exclude or limit the responsibility of the undertaker under this Order for the authorised activities.

(3) The undertaker may grant to any person or take from any person a lease, licence or any other interest in or right over any land, including land comprising or comprised in the tunnel crossing, if it appears to the undertaker expedient to do so for the purpose of or in connection with the exercise by that person of any or all of the authorised activities.

(4) The undertaker may, with the consent of the Secretary of State, transfer the whole or any part of its undertaking.

Application of landlord and tenant law

44.—(1) This article applies to any agreement for leasing to any person the whole or any part of the tunnel crossing or the right to operate the same, and any agreement entered into by the undertaker with any person for the carrying out of the authorised activities or any part of thereof, so far as any such agreement relates to the terms on which any land is subject to a lease granted by or under that agreement.

(a) 1981 c. 14.

(b) 1985 c. 67.

(c) OJL 187, 20.7.1999, p 42.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants shall prejudice the operation of any agreement to which this article applies.

(3) Accordingly no such enactment or rule of law shall apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

PART 6

MISCELLANEOUS AND GENERAL

Saving for Trinity House and protection of navigation

45.—(1) Nothing in this Order shall prejudice or derogate from any of the powers, rights or privileges, or the jurisdiction or authority of Trinity House.

(2) Schedule 9 shall have effect.

Protection of certain persons

46. For the protection of the persons specified in the several Parts of that Schedule, Schedule 10 shall have effect.

Statutory undertakers, etc.

47. Schedule 11 shall have effect.

Minerals

48. Nothing in this Order shall affect the right of any person entitled to any mine or minerals of any description whatsoever under a street or other land in, on, or adjacent to which the authorised works are constructed to work the mine or get the minerals but this shall not affect any liability (whether civil or criminal) of the person so entitled in respect of any damage to the tunnel crossing or the other authorised works resulting from the exercise of any such rights.

Application of local legislation

49. Schedule 12 shall have effect.

Repeal of enactments

50. Schedule 13 shall have effect.

Certification of plans, etc.

51. The undertaker shall, as soon as practicable after the making of this Order, submit copies of the book of reference, the deposited sections and the deposited plans to the Secretary of State for certification that they are, respectively, true copies of the book of reference, sections and 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

52.—(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(a) 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
- (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

53. 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

54. Unless otherwise agreed, any dispute or difference under or arising out of any provision of this Order (other than in relation to any matter otherwise provided for in Schedules 9 or 10 or a difference which falls to be determined by the tribunal) shall be referred to and determined 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

5th August 2005

(a) 1978 c. 30.

SCHEDULES

SCHEDULE 1

Article 1

SCHEDULED WORKS

In the Metropolitan Borough of North Tyneside

- Work No. 1 A toll plaza including amendments to the existing A19 trunk road southbound carriageway comprising:
- Work No. 1A Widening of the existing A19 trunk road (140 metres in length) commencing at a point below the Metro bridge over the A19 trunk road (bridge no. 1187), passing southwards terminating at a point 137 metres south of the said bridge.
- Work No. 1B New toll plaza vehicular area (510 metres in length and 55 metres in width) including toll booths commencing at a point 137 metres south of Metro bridge over A19 trunk road (bridge no. 1187), passing southwards and terminating at a point 647 metres south of the said bridge.
- Work No. 1C A road (292 metres in length) commencing at a point on the East Howdon bypass/Howdon Road roundabout, 330 metres southwest of the Metro bridge over the A19 trunk road (bridge no. 1187), passing west then south-westwards and terminating at a point 73 metres north-west of East Howdon bypass and 420 metres south of the said bridge.
- Work No. 1D A road (153 metres in length) commencing at a point 25 metres east of the A19 trunk road southbound carriageway and 275 metres south of the Metro bridge over the A19 trunk road (bridge no. 1187), passing south-eastwards and terminating at a point on the East Howdon bypass, 215 metres north of Mitford Street.
- Work No. 1E A new administration building, west of the new toll plaza (Work No. 1B) and east of Howdon Bypass, at point 320 metres south of Metro Bridge over A19 (bridge no. 1187), including a car parking area (50 metres in length by 30 metres in width) south west of the new administration building and west of East Howdon bypass.
- Work No. 1F An emergency crossover (13 metres in length) commencing at a point 422 metres south of Metro bridge over the A19 trunk road (bridge no. 1187), passing westwards.
- Work No. 1G A retaining wall (85 metres in length, maximum 8 metres in height) commencing at a point 561 metres south of the Metro bridge over the A19 (bridge no. 1187), 79 metres west of Mitford Street, passing southwards and terminating at a point 645 metres south of the said bridge and 60 metres west of Brinkburn Street.
- Work No. 1H A retaining wall (130 metres in length maximum 6.4 metres in height) commencing at a point 519 metres south of Metro bridge (bridge no. 1187), 15 metres east of existing A19 northbound carriageway, passing southwards and terminating at a point 647 metres south of said bridge and 70 metres west of Brinkburn Street.
- Work No. 2 Amendments to existing toll plaza and A19 trunk road northbound carriageway comprising:
- Work No. 2A Widening and realignment of existing A19 trunk road (793 metres in length) commencing at a point 8 metres south of the Metro bridge over the said road (bridge no. 1187), passing southwards and terminating at a point 48 metres north west of the existing tunnel administration building.
- Work No. 2B A crossover (100 metres in length) on the A19 trunk road commencing at a point 8 metres south of the Metro bridge over the said road (bridge no. 1187), passing southwards and terminating at a point 108 metres south of the said bridge.
- Work No. 2C A realignment of existing toll plaza (250 metres in length), including new tollbooths, continuing on from Work No. 2A, passing west then northwards and terminating at a point 38 metres south west of the existing tunnel portal structure.

- Work No. 2D A realignment of the existing A19 Trunk Road, A19 roundabout (part of) and entrance to existing toll plaza (225 metres in length) commencing at a point 90 metres west of Meldon Street, passing southwards then west and terminating at point 15 metres north west of the existing tunnel administration building.
- Work No. 2E A realignment of the existing A19 roundabout (part of) (95 metres in length) commencing at the termination of Work No. 2A, passing eastwards and terminating at a point 128 metres west of the existing tunnel administration building.
- Work No. 3A A tunnel and road (321 metres in length) continuing on from Work No. 1C, commencing at a point 647 metres south of the Metro bridge over the A19 (bridge no. 1187) passing southwards and terminating at a point 93 metres south of Tyne View Terrace.
- Work No. 3B A vertical escape shaft from the existing road tunnel, between the A19/A185 tunnel roundabout and Tyne View Terrace, 130 metres west of the existing tunnel administration building.
- Work No. 4A A tunnel (of the immersed tube type) and road (211 metres in length) under the River Tyne and Howdon Basin continuing on from Work No. 3A, commencing at a point 93 metres south of Tyne View Terrace, passing southwards and terminating at the borough boundary 304 metres south of Tyne View Terrace.
- Work No. 4B Remodelling of Howdon Basin comprising a pier or quay extension (100 metres in length, 22 to 40 metres in width) over and above Work No. 4A, new sheet pile retaining walls (158 metres in length) around the Howdon Basin and demolition of part of existing quay (88 metres in length, 26 to 35 metres in width).
- Work No. 4C New quay extension (40 metres in length, 15 metres in width) commencing at a point 125 metres east of Howdon Basin passing eastwards and a new sheet pile retaining wall (80 metres in length) continuing from the said extension.
- Work No. 4D Armoured ship protection to immersed tube tunnel (Work No. 4A) south of Howdon Basin extending 60 metres towards the centre of the River Tyne over a width of 80 metres from the southern limit of Work No. 4B.

In the Metropolitan Borough of South Tyneside

- Work No. 5 A tunnel (of the immersed tube type) and road (145 metres in length) under the River Tyne, commencing at the borough boundary at a point 250 metres north of Tyne Street passing southwards and terminating at a point 104 metres north of Tyne Street.
- Work No. 6A A tunnel and road (839 metres in length) continuing on from Work No. 5, commencing at a point 104 metres north of Tyne Street, passing south then south-eastwards and terminating at a point on 4 metres north of the south face of the existing Howard Street (A185) bridge over the existing Tyne Tunnel approach road, 43 metres south west of Stothard Street.
- Work No. 6B A road (part realignment of Tyne Street) (236 metres in length), commencing at a point 27 metres south of the Pedestrian Tunnel building, passing clockwise in a loop around the said building and terminating at the same point.
- Work No. 6C A road on the line of the former Ferry Street (part of) (100 metres in length), commencing at a point 30 metres south of the Pedestrian Tunnel building, passing southwards and terminating at a point 17 metres north of Chaytor Street.
- Work No. 6D A realignment of Chaytor Street (112 metres in length) including a roundabout at the junction with Ferry Street and Work No. 6C. Commencing at a point 52 metres east of Ferry Street junction, passing westwards and terminating at a point 60 metres west of the said junction.
- Work No. 6E A vertical escape shaft from the existing tunnel, 5 metres south of the existing ventilation building and 19 metres west of Ferry Street.
- Work No. 6F A road (160 metres in length) commencing at a point on the western end of Friar Way, passing south-westwards and terminating at a point on Ferry Street 20 metres north of the Grange Road junction.
- Work No. 6G A ventilation building, connecting ventilation tunnel, retaining wall and hard landscaping, east of the tunnel (Work No. 6A) and south west of Howard Street (A185)/Priory Road roundabout.

Work No. 7	A road interchange to replace the existing interchange comprising:
Work No. 7A	A realignment and improvement of the Tyne Tunnel approach road and the A19 trunk road (373 metres in length), including new carriageway, commencing at a point 75 metres north west of the existing Howard Street bridge (A185), passing south-westwards and terminating at a point 10 metres south of the Metro bridge over the A19 trunk road (bridge no. 1027).
Work No. 7B	A road (355 metres in length) commencing at a point 56 metres north west of Howard Street Bridge (A185) passing south-eastwards looping round to head north-eastwards and terminating at a point 5 metres south west of the existing tunnel buildings.
Work No. 7C	A road bridge over Works Nos. 7A, B, K and L to carry traffic to/from A19 towards Howard Street (A185)/Priory Road (B1297) roundabout continuing on from Work No. 7B, passing north-eastwards and terminating at a point 70 metres north east of the existing tunnel buildings.
Work No. 7D	A road (43 metres in length) continuing on from Work No. 7C, passing north-eastwards and terminating at the Howard Street (A185)/Priory Road (B1297) roundabout.
Work No. 7E	A realignment and enlargement of the existing Howard Street (A185)/Priory Road (B1297) roundabout (178 metres in length) commencing at a point 22 metres south east of Russell Street, passing in a clockwise direction and terminating at the same point.
Work No. 7F	A realignment of Priory Road (B1297) (31 metres in length) commencing at a point 32 metres south of St. Paul's Road, passing eastwards and terminating at point 30 metres south of the said road.
Work No. 7G	A realignment of Howard Street (A185) (60 metres in length) commencing at a point on the junction of the Howard Street (A185)/Priory Road (B1297) roundabout, passing westwards and terminating at a point 60 metres west from said junction.
Work No. 7H	A road bridge and road (total 21 metres in length) to replace the existing bridge carrying Howard Street (A185) over the Tyne Tunnel approach road (Works Nos. 6A, 7A & 7B) continuing on from Work No. 7G, passing westwards and terminating at point 69 metres east of St. Bede's Roman Catholic School and 9 metres north west of existing Howard Street bridge.
Work No. 7J	A realignment of Howard Street (A185) (122 metres in length) continuing on from Work No. 7H commencing at a point 81 metres west of the junction at Howard Street/Priory Road roundabout, passing westwards and terminating at a point 65 metres east from the junction at Howard Street/Monkton Terrace roundabout.
Work No. 7K	A realignment and improvement of the Tyne Tunnel approach road and the A19 trunk road (283 metres in length) including a new carriageway continuing on from Work No. 6A, passing south-westwards and terminating at the south face of the Metro bridge over the A19 trunk road (bridge no. 1027).
Work No. 7L	A slip road and lay-by area (202 metres in length) from the Tyne Tunnel approach road to the new roundabout at end of Straker Street (Work No. 7S) commencing at south side of Howard Street bridge (A185), passing south-eastwards and terminating at a point 32 metres south east of former mineral railway bridge.
Work No. 7M	A realignment and improvement to the A185 link road (164 metres in length) from Work No. 7E to Work No. 7S, commencing at a point 39 metres south of the junction of Priory Road to the existing roundabout, passing southwards and terminating at a point 30 metres south east of the former mineral railway bridge.
Work No. 7N	A retaining wall (68 metres in length 7 metres maximum height) commencing at a point on the north face of the existing Howard Street bridge, passing southwards and terminating at a point 45 metres south of the said bridge.
Work No. 7P	A retaining wall (170 metres in length 6 metres maximum height) continuing on from Work No. 7N, commencing at a point 28 metres east of Epiny Walk and 4 metres west of the existing tunnel buildings, passing south-west and going in an anticlockwise direction and terminating at a point 95 metres east of Epiny Walk and 72 metres south east from the said building.

Work No. 7Q	Buildings, parking and waiting areas adjacent to Work No. 7B and extending below Work No. 7C terminating at the existing Howard Street bridge (A185).
Work No. 7R	A slip road (154 metres in length) from Work No. 7B commencing at a point 57 metres south east of the existing tunnel buildings, passing south-eastwards and terminating at a point 10 metres south the Metro bridge over A19 trunk road (bridge no. 1027).
Work No. 7S	A roundabout at west-end of Straker Street (A185) (130 metres in length) commencing at a point 40 metres south east of the existing former mineral railway bridge, passing in a clockwise direction and terminating at the same point.
Work No. 7T	A realignment of Straker Street (A185) (16 metres in length) commencing at a point 29 metres east of the existing junction of Straker Street with the existing A19/A185 roundabout, passing eastwards and terminating at a point 45 metres east of said junction.
Work No. 7U	A link road (47 metres in length) from Work No.7S, commencing at a point 60 metres north of the Metro railway bridge (bridge no. 1027), passing south-westwards and terminating at a point 17 metres north of the said bridge.
Work No. 7V	A slip road (156 metres in length), including widening of the existing A19 trunk road, continuing on from Work No. 7U, passing south-westwards and terminating at a point 128 metres south west of the Metro railway bridge (bridge no. 1027).
Work No. 7W	A realignment of the north east wing wall of the Metro railway bridge (bridge no. 1027) (11 metres in length).

SCHEDULE 2

Articles 5 and 6

STREETS SUBJECT TO WORKS

<i>(1)</i> Area	<i>(2)</i> Street Subject to Works
In the Metropolitan Borough of North Tyneside	<p>Existing A19 northbound realigned in position and level to accommodate access for northbound traffic from toll plaza.</p> <p>Existing roundabout junction at southern end of A19; Carriageway realigned to facilitate link to local highway network from toll plaza for north bound traffic.</p> <p>Link road (south side) between the roundabout on the southern end of the A19 and the roundabout at the southern end of the Howdon bypass; Delineation kerbing required to close part of existing junction.</p> <p>Existing toll plaza; Reconfigured to accommodate new toll plaza. Access to all existing tunnel facilities to be maintained.</p> <p>East Howdon bypass—Northbound carriageway; Kerbing removed to accommodate new access to tunnel staff facility and access to local highway network from emergency turn back area.</p> <p>Roundabout at junction of East Howdon bypass and Howdon Road; Kerbing removed to accommodate new public transport link.</p>

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street Subject to Works</i>
In the Metropolitan Borough of South Tyneside	<p>Chaytor Street—North side of junction with Ferry Street; Kerbing and footway altered to form new junction.</p> <p>Chaytor Street—North side at junction with Commercial Road; New kerbing and footway provided across junction with Commercial Road.</p> <p>Curlew Road—West end at junction with Tyne Street; Demarcation kerbing and turning facility required.</p> <p>Chaytor Street—Between Commercial Road and Ferry Street junctions; pedestrian crossing to be constructed to facilitate footpath link.</p> <p>Commercial Road—To the front of properties 45 to 50; carriageway width reduced and new carriageway introduced (at reduced width) to maintain access to properties.</p> <p>Ferry Street—east side at junction with Ormonde Street new kerb and footway provided across former junction.</p> <p>Ferry Street—East side slightly north of Grange Road junction; Kerbing and footway removed to facilitate new junction.</p> <p>Staple Road—East side; Kerbing and footway provided across former junction with Stanley Street.</p> <p>Stanley Street—West end, turning facility required.</p> <p>Howard Street at existing A19 overbridge; carriageway realigned to accommodate new bridge. Footpaths and bus stopping facility to be replaced.</p> <p>A185 from existing roundabout junction adjacent to St Paul’s Estate, south to new roundabout on A185 on the western end of the River Don overbridge; Carriageway and footways to be realigned to accommodate new layout.</p> <p>Western arm of existing roundabout at junction of A185 and A19; Realigned to provide off-slip to new compact spiral junction.</p> <p>Existing A19 carriageways both north and southbound; Various accommodation works required to provide new carriageways.</p> <p>Existing and southbound; Realigned in position and level to accommodate new tunnel access.</p>

SCHEDULE 3

Article 7

STREETS TO BE 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 provided</i>
In the Metropolitan Borough of North Tyneside	A19 Trunk road— Southbound carriageway including verge and embankment.	Between points NT1A and NS2 and points NT1B and NS2.	Works Nos. 1A, 1B and 2D (part).
	A19 Trunk road— northbound carriageway including verge and embankment.	Between points NS4 and NT3A and points NS4 and NT3B.	Work No. 2A.
	A19 Roundabout.	From point NS2 in a clockwise direction to the point NS2.	Works Nos. 2A(part), 2D(part) and 2E(part).
	To the extent that it comprises a street the toll plaza from tunnel portal to A19 roundabout.	Between points NS5 and NS6.	Work No. 2C.
	Footpath/Cycleway on land east of A19 trunk road.	Between points NSF4 and NSF5.	Footpath/Cycleway to be provided between points NSF4 and A1 and between points A2 and NSF5.
In the Metropolitan Borough of South Tyneside	Tyne Street.	Between points SS1 and SS2 and between points SS3 and SS4.	Works Nos. 6B and 6C.
	Curlew Road.	Between points SS4 and SS5.	Works Nos. 6B and 6C.
	Commercial Road.	Between points SS4 and SS6.	Works Nos. 6B and 6C.
	Chaytor Street.	Between points SS28 and SS29.	Work No. 6D.
	Footpaths/Cycleway north of Tyne Street, south of River Tyne.	Area SSF1.	Footpath to be provided between points B1 and B3;
	Footpaths in landscaped area bounded by Commercial Road, Chaytor Street, Tyne Street and the former Ferry Street.	Area SSF2.	and footpath to be provided between points B2 and B3.
	Footways in area bounded by Ferry Street, Ormonde Street and Commercial Road.	Area SSF3.	Footpath to be provided between points B4 and B5; and footpath to be provided between points B6 and B7.
Commercial Road.	Between points SS7 and SS8.	Footpaths to be provided between points B4 and B5.	

<i>(1) Area</i>	<i>(2) Street to be stopped up</i>	<i>(3) Extent of stopping up</i>	<i>(4) New street to be provided</i>
	Ormonde Street.	Between points SS8 and SS9.	Footpaths to be provided between B6 and B7; and footpath to be provided between points B5 and B6.
	Footway between Ferry Street and Dunn Street School.	Between points SSF4 and SSF5.	Work No. 6F.
	Footway, carriageway and verge of Howard Street.	Between points SS18 and SS19.	Works Nos. 7G, 7H and 7J.
	Footway, carriageway and verge of Priory Road.	Between points SS20 and SS21.	Works Nos. 7F and 7E (Part).
	Footway, carriageway and verge of A185.	Between points SS22 and SS23.	Works Nos. 7E (Part) and 7M.
	To the extent that it comprises a street the footway, carriageway and verge of A19 and Tyne Tunnel approach road.	Between points SS16 and SS17.	Works Nos. 7A (Part), 7B (Part), 7K (Part), 7L(Part), 7Q(Part) and 7R(Part).
	Existing roundabout at Junction of A185, A19 etc.	From point SS17 clockwise to same position.	Works Nos. 7A (Part), 7B (Part), 7K (Part), 7L (Part), 7M (Part), 7R (Part), and 7S (Part).
	Footway, carriageway and verge on A185.	Between points SS24 and SS25.	Works Nos. 7S (Part) and 7T.
	Footway, carriageway and verge on A19.	Between points SS26 and SS27.	Works Nos. 7A (Part), 7K (Part), 7R (Part), 7U (Part) and 7V.
	Footway linking A185 to south side of Howard Street.	Between points SSF8 and SSF9.	Works Nos. 7E (Part), 7G (Part) and 7M (Part).
	Link footway from, footway linking A185 to south side of Howard Street, to roundabout at junction of Howard Street, Priory Road and A185.	Between points SSF10 and SSF11.	Works Nos. 7E (Part), 7G (Part) and 7M (Part).

PART 2

STREETS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be affected</i>	<i>(3)</i> <i>Extent of stopping up</i>
In the Metropolitan Borough of North Tyneside	Footpath adjacent to the A19 trunk road southbound carriageway.	Between points NSF1 and NSF2.
	Footpath between A19 trunk road and Howdon Bypass.	Between points NSF2 and NSF3.
In the Metropolitan Borough of South Tyneside	Stanley Street carriageway and footway.	Between points SS10 and SS11.
	Street or highway west of Stothard Street.	Between points SS12, SS13, SS14 and SS15.
	Footpath linking south side of Salem Street to carriageway extending westward from north end of Stothard Street.	Between SSF6 and SSF7.

SCHEDULE 4

Article 8

STREETS TO BE TEMPORARILY STOPPED UP

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
In the Metropolitan Borough of North Tyneside	Footpath/cycleway on land east of A19 trunk road.	Between points NTF1, NTF2 and NSF4.
	Access track on land east of A19 trunk road.	Between points NT1 and NT2.
	A187 East Howdon Bypass and roundabout (part of).	Between points NT3 and NT4.
	A187 East Howdon Bypass.	Between points NT5 and NT6.
	Link road between A19 roundabout and A187 East Howdon Bypass roundabout.	Between points NT7 and NT8.
	Tyne View Terrace.	Between points NT9 and NT10.
In the Metropolitan Borough of South Tyneside	Quayside walkway on southern banks of River Tyne.	Between STF1 and STF2.
	Chaytor Street.	Between points ST1 and ST2.
	Ferry Street—footway on eastern side.	Between STF3 and STF4.
	Staple Road—footway on eastern side.	Between STF4 and STF5.
	High Street.	Between ST3 and ST4.
	Dee Street—footway on eastern side.	Between STF6 and STF7.
	Salem Street.	Between ST5 and ST6.

Note: Unless the contrary is provided the stopping up of any street in the above table shall include all associated footways, carriageways and verges.

SCHEDULE 5

Article 9

ACCESS TO WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Description of Access</i>
In the Metropolitan Borough of North Tyneside	<p>Access No. NA2—from A187 East Howdon Bypass roundabout.</p> <p>Access No. NA3—from A187 East Howdon Bypass.</p> <p>Access No. NA4—from A187 East Howdon Bypass southern roundabout.</p> <p>Access No. NA5—from Tyne View Terrace.</p> <p>Access No. NA6—from Tyne View Terrace.</p> <p>Access No. SA1—from Chaytor Street North at the junction of Ferry Street.</p>
In the Metropolitan Borough of South Tyneside	<p>Access No. SA2—from Chaytor Street North at the junction with Commercial Road.</p> <p>Access No SA3—from Chaytor Street South at the junction with Commercial Road. Access works will require removal of a section of existing footpath on the south side of Chaytor Street.</p> <p>Access No. SA4—from Ferry Street East at the junction with Ormonde Street.</p> <p>Access No. SA5—from Ferry St East.</p> <p>Access No. SA6—from Salem Street at Dee Street junction.</p> <p>Access No. SA7—from Howard Street north toward Stothard Street new access to be formed.</p> <p>Access No. SA8—from Howard Street north toward Stothard Street new access to be formed.</p>

SCHEDULE 6

Article 25

LAND COMPRISING OPEN SPACE EXCLUDED FROM COMPULSORY ACQUISITION

<i>(1) Number of Land in the Book of Reference</i>	<i>(2) Description of Land in Book of Reference</i>
<p>In the Metropolitan Borough of South Tyneside</p> <p>102</p> <p>105</p> <p>111</p> <p>117</p> <p>118</p>	<p>7,895 square metres. Landscaped areas known as Riverside Park adjacent to quay wall.</p> <p>4,915 square metres. Landscaped area known as Riverside Park. Part footway of Tyne Street.</p> <p>7,033 square metres. Section of landscaped area and footway bordered by Tyne Street, Chaytor Street and Commercial Road. (Note: parcel does not include subsoil of shaded areas).</p> <p>984 square metres. Rectangular plot adjacent to junction of Chaytor Street and Commercial Road.</p> <p>186 square metres. Landscaped area adjacent to junction of Ormonde Street and Commercial Road. Formerly 2 Ormonde Street and 17 Drury Lane, Jarrow.</p>

<i>(1) Number of Land in the Book of Reference</i>	<i>(2) Description of Land in Book of Reference</i>
123.02	7,717 square metres. Playing field to the east of Jarrow Cross Church of England Controlled Primary School.
129	2,517 square metres. Part of school playing field at Dunn Street School.
193.01	460 square metres. Plot comprising landscaped area and verges north of A185/A108 link road and east of roundabout junction with A19 Trunk Road and A108.
195	5,678 square metres. Plot comprising landscaped area and footways north of Howard Street and east of Debussy Court and Epinay Walk.
500-517	Formerly the site of housing.
165.02	210 square metres. Sections of verges and footway to the north end of Stothard Street together with landscaped areas.
165.03	101 square metres. Sections of verges to the north end of Stothard Street together with landscaped areas.
169.01	1,111 square metres. Verges, footways and landscaped areas associated with the roundabout junction of A19, A108 and A185.
169.02	2,185 square metres. Verges, footways and landscaped areas associated with the roundabout junction of A19, A108 and A185.
169.08	143 square metres. Plot comprising verges and landscaped areas between section of Howard Street west of St Paul's Bridge and Epinay walk.
189.01	246 square metres. Landscaped area comprising Epinay Walk.

SCHEDULE 7

Article 23

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(a) shall have effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44 (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) in subsection (1) for the words “land is acquired or taken” there shall be substituted the words “a right over land is purchased”; and
- (b) in subsection (1) 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”.

(a) 1973 c. 56.

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 Act to land are read (according to the requirements of the particular context) as referring to, or as including reference 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 (provision as to divided land) 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 a 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 the land consists of a house, building or manufactory, that the right cannot be purchased without detriment to that land, or
 - (ii) where the 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 River Tyne (Tunnels) Order 2005 (“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 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.”

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 interest 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, from the date on which the acquiring authority have served notice to treat in respect of any right, they have power exercisable in the like circumstances and subject to the like conditions, to enter for the purposes 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 8

Article 27

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on deposited plan entitled "Land Plan"</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken in connection with the authorised works</i>
1.9774 hectares. Rohm & Haas Site, Tyne Street Jarrow	109	The provision of a construction compound and works area
7.1542 hectares. Land and buildings adjacent to the River Tyne including the former Mercantile Dock	208	The provision of a construction compound and works area and for the temporary storage of dredged arisings and aggregates from the River Tyne or elsewhere

SCHEDULE 9

Article 45

PROTECTION OF NAVIGATION

1. In this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “constructed” has a corresponding meaning;

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

“tidal work” means so much of any work authorised by this Order as is on, over or under tidal waters or land below the level of mean high-water springs; and

“Trinity House” means the Corporation of Trinity House of Deptford Strond.

Tidal works

2.—(1) A tidal work shall not be constructed, altered, replaced or re-laid except in accordance with plans approved by the Secretary of State and subject to any conditions and restrictions imposed by him before the work is begun.

(2) If a tidal work is constructed, altered, replaced or re-laid in contravention of this paragraph or of any condition or restriction imposed under this paragraph—

(a) the Secretary of State may by notice in writing require the undertaker at its own expense to take whatever steps he considers necessary to remedy the contravention;

(b) without prejudice to the generality of sub-paragraph (a), the steps in question may include steps to—

(i) alter, replace or re-lay any tidal work, or

(ii) remove the tidal work or any part of it, or restore the site to its former condition or as near to its former condition as is acceptable to him;

(c) any notice served by the Secretary of State under sub-paragraph (a) shall specify the period within which the undertaker shall comply with the requirements of that notice and may specify different periods for the taking of different steps; and

(d) where the undertaker fails to comply with the requirements of a notice served under sub-paragraph (a) within the period specified in that notice, the Secretary of State may himself execute the works required by the notice.

(3) Where it appears to the Secretary of State to be urgently necessary to do so, he may himself remove the tidal work, or any part of it, or restore the site to its former condition or as near to its former condition as he considers appropriate.

(4) The Secretary of State may, if he considers it expedient, order a survey and examination of any site on which it is proposed to execute a tidal work.

Damage etc. to works

3.—(1) In case of damage to or destruction or decay of a tidal work, or any part of a tidal work, the undertaker shall as soon as reasonably practicable—

- (a) give notice to Trinity House and the Port Authority, and
- (b) lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House may direct.

(2) If the undertaker fails to notify Trinity House and the Port Authority as required by this paragraph or to comply in any respect with a direction given under this paragraph it shall be guilty of an offence.

Abandonment etc. of structures

4.—(1) Where a tidal work is abandoned, or allowed to fall into decay, the Secretary of State may by notice in writing require the undertaker at its own expense—

- (a) to repair and restore the work, or any part of it, or
- (b) to remove the work and restore the site to its former condition or so near its former condition as is acceptable to him.

(2) Where—

- (a) a work erected under this Order part of which is a tidal work is abandoned or allowed to fall into decay, and
- (b) the part of the work on or over land above the level of mean high-water springs is in such a condition as to interfere, or cause reasonable apprehension that it may interfere, with the right of navigation or any public rights over the foreshore,

the Secretary of State may include that part of the work, or any portion of it, in any notice under sub-paragraph (1).

(3) If at the end of the period of 28 days from the date when notice is served on the undertaker under sub-paragraph (1) it has failed to begin taking steps to comply with the requirements of the notice or, after beginning, has failed to make reasonably expeditious progress towards their implementation, the Secretary of State may execute the works specified in the notice.

Surveys etc.

5. The Secretary of State may, if he considers it expedient, order a survey and examination of any tidal work.

Offences

6.—(1) Where the undertaker is guilty of an offence under paragraph 3 it shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) In proceedings for any such offence it shall be a defence for the undertaker to show that it took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(3) If in any case the defence provided by sub-paragraph (2) involves the allegation that the commission of the offence was due to the act or default of another person, the undertaker shall not, without the leave of the court, be entitled to rely on the defence unless, not later than 7 days before the hearing of the proceedings, it has served on the prosecution a notice in writing giving such information as was then in its possession identifying or assisting in the identification of the other person.

7. The Secretary of State shall be entitled to recover from the undertaker any expenditure incurred by him under paragraphs 2(2)(d) or 2(3) or 4(3) or on a survey and examination under paragraphs 2(4) or 5.

SCHEDULE 10

Article 46

PROTECTION OF CERTAIN PERSONS

PART 1

GENERAL

Application of Schedule 10

1. The provisions of each Part of this Schedule including this Part shall have effect for the protection of each of the bodies referred to in that Part below unless, in the case of any such body, it is otherwise agreed in writing between the undertaker and the body concerned.

Arbitration

2. Unless any provision of this Schedule provides the contrary any difference arising between the undertaker and any body referred to in this Schedule (other than a difference as to the meaning or construction of this Schedule) shall be referred to and settled by arbitration in accordance with article 54.

PART 2

PROTECTION OF THE ENVIRONMENT AGENCY

3.—(1) The provisions of this Part of this Schedule shall apply for the protection of the Agency unless otherwise agreed in writing between the undertaker 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;

“damage” includes scouring, erosion and environmental damage and “damaged” shall be construed accordingly;

“drainage work” means any watercourse and includes any land which provides or is expected to provide flood storage capacity 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;

“the 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

(d) affect the conservation, distribution or use of water resources;

but shall not include internal works to the new tunnel after Works Nos. 4A and 5 have become watertight; 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.

4. No dredging operations shall take place for the excavation of a trench for placing Works Nos. 4A and 5 south of an imaginary line parallel with and 75 metres south of the line of Howdon Quay during or between the months of April and October in any year.

5.—(1) Before beginning to construct any specified work, the undertaker 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 15.

(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 in writing and in the case of a refusal, accompanied by a statement of the grounds for refusal within 42 days 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 the 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.

6. Without prejudice to the generality of paragraph 5, the requirements which the Agency may make under that paragraph include—

- (a) conditions as to the time and the manner in which any other work or operation is to be carried out;
- (b) conditions requiring the undertaker at its own expense—
 - (i) to provide or maintain means of access for the Agency;
 - (ii) to construct such protective works, whether temporary or permanent, during the construction of the specified works (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 to safeguard any drainage work against damage or 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;
 - (iii) to monitor accumulation, erosion or alterations of the tidal flow arising during the construction or following the completion of the specified works; and
 - (iv) to provide, maintain and operate arrangements for dealing with any pollution incidents which may occur during and as a result of the construction of the specified works.

7.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 6, shall be constructed—

- (a) within such period (if any) as the Agency may approve at the time of approval or upon an application by the undertaker thereafter (such approval 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) The undertaker 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.

(3) If any part of the works comprising a structure in, over or under a watercourse is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Agency may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the undertaker 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 as the Agency reasonably requires.

(4) Subject to sub-paragraph (5), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served upon the undertaker, it has failed to begin taking steps to comply with the requirements of the notice and thereafter complete them within such reasonable period as may be specified in such notice, the Agency may execute the works specified in the notice and any expenditure reasonably incurred by it in so doing shall be recoverable from the undertaker.

(5) In the event of any dispute as to whether sub-paragraph (4) is properly 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 (4) until the dispute has been finally determined.

8.—(1) Before commencing the construction of a specified work the undertaker shall procure at its expense in liaison with and to the reasonable satisfaction of the Agency a survey of any drainage work liable to be affected by that specified work.

(2) Subject to sub-paragraph (3), the undertaker shall, from the commencement of the construction of the specified works and except to the extent that any approval given by the Agency under this Part of this Schedule permits otherwise, maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land owned by the undertaker or which it otherwise has control of or is in occupation of for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers of the Order or is already in existence.

(3) The obligation imposed on the undertaker under sub-paragraph (2) does not apply where the Agency or another person is liable to maintain any such work and is not precluded by the exercise of the powers of the Order from doing so.

(4) If any drainage work referred to in sub-paragraph (2) is not maintained in good repair and free from obstruction the Agency may by notice in writing require the undertaker to repair and restore the work, or any part thereof, or (if the undertaker 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.

(5) 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 (4) on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and thereafter completed them within such reasonable period as may be specified in the notice, the Agency may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the undertaker.

(6) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (4), the Agency shall not except in a case of emergency exercise the powers of sub-paragraph (5) until the dispute has been finally determined.

9. 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 the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so within such reasonable period as the Agency may require by notice in writing to the undertaker, the Agency may make good the same and recover from the undertaker the expense reasonably incurred by it in so doing.

10.—(1) The undertaker shall take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the 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 the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the undertaker requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) 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, the undertaker fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and may recover from the undertaker the expense reasonably incurred by it in doing so.

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

11. The undertaker shall indemnify the Agency in respect of all reasonable and proper 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;
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule.

12.—(1) Without prejudice to the other provisions of this Part of this Schedule, the undertaker 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 the fishery;
- (c) any raising or lowering of the water table in land adjoining the authorised works or any sewers, drains and watercourses;
- (d) any flooding or increased flooding of any such lands; or
- (e) inadequate water quality in any watercourse or other surface waters or in any groundwater;

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

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

(3) Prior to incurring any expense which it may seek to recover under this paragraph, the Agency shall, except in a case of urgency, serve notice on the undertaker informing it of the Agency's intentions and requiring it within such time as the Agency may reasonably specify to take such steps as may be reasonably practicable to avoid the need for the Agency to incur such costs.

(4) Nothing in this Part of this Schedule shall impose any liability on the undertaker in respect of any damage to the extent that it is attributable to the negligent act or omission of the Agency, its officers, servants or, if not the undertaker, its contractors or agents.

13. The fact that any work or thing has been executed or done by the undertaker 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 the undertaker from any liability under the provisions of this Part of this Schedule.

14. For the purposes of Chapter II of Part II of the Water Resources Act 1991^(a) (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 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 the undertaker 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).

15. Any dispute arising between the undertaker and the Agency under this Part of this Schedule shall, if the parties agree, be determined by arbitration, but shall otherwise be determined by the Secretary of State for Environment, Food and Rural Affairs.

PART 3

PROTECTION OF THE PORT OF TYNE AUTHORITY

16. The provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and the Port of Tyne Authority, have effect for the protection of the Port Authority.

17. The undertaker may with the written consent of the Port Authority deviate upwards from the levels shown on the deposited sections to such extent as may be indicated in that consent.

18. Before commencing a tidal work or a part of a tidal work the undertaker shall submit plans thereof to the Port Authority for their approval (which approval shall not be unreasonably withheld but may be given subject to reasonable conditions) and shall not commence the same until such plans have been approved by the Port Authority: but if the Port Authority do not within 42 days after the receipt of any such plans notify to the undertaker their disapproval thereof and the grounds for their disapproval they shall be deemed to have approved them.

19. (a) Subject to the provisions of this Part of this Schedule, a tidal work shall not be constructed or carried out except in accordance with such plans as may be so approved or deemed to be approved by the Port Authority or determined by arbitration or in such other manner as may be agreed, and in accordance with any reasonable conditions subject to which approval is so given or determined and to the reasonable satisfaction of the Port Authority.

(b) A tidal work shall be so constructed and thereafter maintained as to ensure that the traffic on the river is not interfered with except with the written approval of the Port Authority (which consent shall not be unreasonably withheld but may be given subject to reasonable conditions) and in any event no more than is reasonably necessary for the construction or maintenance of a tidal work; and, subject to the foregoing, that at all times during construction of the tidal works an unobstructed main navigation channel within the tunnel area for the safe passage of vessels is maintained and kept dredged by the undertaker to such depth as the Port Authority may reasonably require and to a width of not less than 60 metres.

20. The undertaker shall allow the authorised representatives of the Port Authority to inspect and survey all or any of the tidal works on reasonable written notice (or such notice as may be practicable in case of emergency) in that behalf being given to the undertaker by the Port Authority, and shall give all reasonable facilities for so doing.

21. Nothing in this Order shall authorise or empower the undertaker without the previous written consent of the Port Authority (which consent shall not be unreasonably withheld but may be given subject to reasonable conditions), to embank, encroach upon or interfere with any part of the bed, shores or banks of the river except as is expressly authorised by this Order or authorised by the Port Authority pursuant to paragraphs 18 and 19.

^(a) 1991 c. 57.

22. Except so far as may be unavoidable in the construction of a tidal work, the undertaker shall not, without the written consent of the Port Authority (which consent shall not be unreasonably delayed or withheld), deposit or permit the deposit of any material on or in the river or on the bed, shores or banks of the river; and the undertaker shall within 7 days after receipt of written notice to that effect from the Port Authority remove any material so unavoidably deposited without the written consent of the Port Authority under paragraphs 18 and 19, as in the reasonable opinion of the Port Authority is necessary for facilitating or preserving safety of navigation.

23. The undertaker shall not, except for the purpose of constructing the authorised works, remove any gravel, soil or other material from the bed, shores or banks of the river without the previous written consent of the Port Authority (which consent shall not be unreasonably delayed or withheld), but nothing in this paragraph shall prevent the use by the undertaker of any gravel, soil or other material so removed for the purposes of the construction of other authorised works.

24. From the time when the construction of the tidal works is commenced the undertaker shall proceed with such works with all reasonable diligence and without unreasonable delay until all of the tidal works are completed and all temporary works removed from the river.

25. (a) The undertaker shall consult with the Port Authority as to any pile, stump or other obstruction in the river which becomes exposed in consequence of the tidal works and shall forthwith remove from the river any such pile, stump or other obstruction which in the reasonable opinion of the Port Authority is a hazard to navigation or, if it is not reasonably practicable to remove it, the same shall be cut off at such level below the maximum dredged depth of the bed of the river as the Port Authority acting reasonably and without delay may from time to time approve (not being more than two metres below that depth in the main navigation channel or one metre so below elsewhere in the river).

(b) If the undertaker fails to remove from the river any such pile, stump or other obstruction within 7 days after receipt of written notice from the Port Authority requiring the removal, the Port Authority may with all reasonable diligence and without unreasonable delay carry out the removal and recover their reasonable expenses from the undertaker.

26. The undertaker shall, at or near every tidal work exhibit such lights, lay down such buoys and take such other steps for preventing danger to navigation as the Port Authority may from time to time reasonably require.

27. If, except in the case of the new tunnel—

- (a) any tidal work is abandoned or out of repair or is in such other position that it is or is likely to become a danger to or (save as this Order may permit) interfere with navigation or other public rights in the river; and
- (b) the Port Authority by written notice require the undertaker to repair the tidal work or (if the undertaker no longer requires the work) to abate and remove the tidal work or any part of it and restore the site to its former condition; and
- (c) the undertaker fails to comply with the notice within 28 days after the receipt of it;

the Port Authority may abate and remove the work or any part of it and restore the site to its former condition and may recover their reasonable expenses from the undertaker.

28. Subject to paragraph 40 and to complying with paragraph 41, the Port Authority may recover from the undertaker any reasonable expenses howsoever caused (including a proper proportion of the overhead charges of the Port Authority) which the Port Authority incur—

- (a) arising from the approval of plans and the inspection of the construction or carrying out of any tidal work;
- (b) by reason of any act or omission of the undertaker, or of any person in their employ, or of their contractors or workmen whilst engaged upon any tidal work;
- (c) in dredging away any accumulation consequent upon the execution or maintenance of a tidal work;
- (d) in obtaining and depositing in the river such material as is necessary in the reasonable opinion of the Port Authority to protect river users and other works in the river from the effects of scouring of the river bed consequent upon the execution or maintenance of a tidal work;
- (e) in altering any mooring in any way which in the reasonable opinion of the Port Authority may be rendered necessary by reason of the execution or maintenance of a tidal work;
- (f) in carrying out reasonable surveys, inspections, tests and sampling within and of the river (including the bed and banks of the river)—
 - (i) to establish the marine conditions prevailing prior to the construction of a tidal work in such area of the river as the Port Authority have reasonable cause to believe may subsequently be affected by any siltation, scouring or other alteration which the undertaker is liable to remedy under this article; and
 - (ii) where the Port Authority have reasonable cause to believe that the construction of a tidal work is causing or has caused any siltation, scouring or other alteration as aforesaid; and

- (g) arising from the carrying out of construction of a tidal work or the failure of a tidal work or the undertaking by the Port Authority of works or measures to prevent or remedy danger or impediment to navigation or damage to any property arising from such carrying out of construction, exercise or failure;

and subject as aforesaid the undertaker shall indemnify the Port Authority from and against all claims and demands arising out of such construction or carrying out, failure or act or omission as aforesaid; but the Port Authority shall as soon as reasonably practicable give to the undertaker notice of any claim or demand which is one for which the undertaker may be liable under this paragraph and no settlement or compromise of any such claim or demand shall be made without the consent in writing of the undertaker.

29. Nothing in this Order authorises the doing of anything prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991(a) (offences of polluting controlled waters).

30. The Port Authority shall not be liable, in the absence of negligence or breach of any duty hereunder or otherwise, for any damage or injury howsoever caused to the new tunnel or to any of the authorised works (whether temporary or permanent) resulting from the dredging operations of the Port Authority or the carrying out by them in the execution of their statutory powers and duties of any operations in the river or works for the improvement or maintenance thereof; and it shall be a defence to any proceedings for an offence under article 38 of this Order arising from the carrying out of such dredging or other operations or works by the Port Authority that the same were reasonably necessary and carried out without negligence.

31. After the purpose of any temporary tidal work has been accomplished or after a reasonable period of notice in writing from the Port Authority requiring it so to do, the undertaker shall with all reasonable dispatch, remove that work or any materials relating thereto which may have been placed below the level of high water by or on behalf of the undertaker and, on its failing so to do within a reasonable period after receiving such notice, the Port Authority may remove the same and charge the undertaker with the reasonable expense of so doing, which expense the undertaker shall repay to the Port Authority.

32. If during the construction of a tidal work or within 10 years after the completion of that work and as a consequence whether in whole or in part of its construction, there is caused or created an accumulation or erosion, the undertaker, if so requested by the Port Authority before or within the period of 10 years after such completion, shall remedy such accumulation or erosion in the manner specified in paragraph 34 and, if it refuses or fails so to do, the Port Authority may themselves cause the work to be done and may recover the reasonable cost thereof from the undertaker to the extent that the same is attributable to such construction as aforesaid.

33. Should any such accumulation or erosion as is mentioned in paragraph 32 arise within the period of 10 years mentioned in that paragraph and be remedied in accordance with paragraph 34, any recurrence of such accumulation or erosion shall from time to time be so remedied by the undertaker during that period of 10 years and at any time thereafter, save that the undertaker's obligation under this paragraph shall cease in the event that following the remedying of any accumulation or erosion a period of 10 years elapses from the completion of that remedying, without any further accumulation or erosion being caused or created in consequence of such construction or exercise.

34. For the purpose of paragraphs 32 and 33—

- (a) in the case of an accumulation, the remedy shall be its removal; and
- (b) in the case of erosion, the remedy shall be the carrying out of such reconstruction works and other protective works or measures as may be reasonably necessary.

35. In the event it is established that any accumulation or erosion mentioned in paragraph 32 or 33 would have been caused in any event by factors other than the construction of a tidal work, the undertaker shall be liable to remedy such accumulation or erosion only to the extent that the same is attributable to such construction as aforesaid.

36. For the purposes of paragraph 32 the date of completion of a tidal work shall be the date on which it is brought into use.

37. The undertaker shall—

- (a) pay to the Port Authority the reasonable costs incurred by the Port Authority of such alterations to the marking and lighting of the navigational channel of the river as may be necessary during or in consequence of the construction of a tidal work;
- (b) provide and maintain on any tidal works such fog signalling apparatus as may be reasonably required by the Port Authority and shall properly operate such apparatus during periods of restricted visibility for the purpose of warning vessels of the existence of the relevant works; and
- (c) afford to the Port Authority such facilities as they may reasonably require for the placing and maintenance on any tidal works of signals, tide-boards, tide-gauges or other apparatus for the safety or benefit of navigation.

(a) 1991 c. 57.

38. Nothing in this Part of this Schedule shall impose any liability on the undertaker to the extent that any losses, costs, charges, damages, expenses, claims or demands of the Port Authority or for which the Port Authority may be liable above are attributable to negligence or breach of statutory duty on the part of the Port Authority or any act or omission by it of any person in their employ or of their contractors or agents.

39. The Port Authority shall give to the undertaker notice of any claim or demand in relation to which the undertaker may be liable under this Part of this Schedule and no settlement or compromise of any such claim or demand shall be made without the consent in writing of the undertaker 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.

40. The fact that any work or thing has been executed or done with the consent of the Port Authority and in accordance with any reasonable conditions or restrictions prescribed by the Port Authority or in accordance with plans approved or deemed to be approved by the Port Authority or to their satisfaction or in accordance with any directions or award of an arbitrator or in accordance with any plans approved by the Secretary of State and any conditions or restrictions imposed by him shall not relieve the undertaker from any liability under the provisions of this Part of this Schedule save where any such liability arises by reason of any conditions or restrictions imposed by the Port Authority.

41. With the exception of any duty owed by the Port Authority to the undertaker which is expressly provided for in the foregoing provisions of this Part of this Schedule, nothing in this Order shall be construed as imposing upon the Port Authority either directly or indirectly, any duty or liability to which the Port Authority would not otherwise be subject and which is enforceable by proceedings before any court.

42. Save as the terms of this Order may otherwise provide nothing in this Order shall affect prejudicially any statutory or other rights, powers or privileges vested in, or enjoyed by, the Port Authority or the harbour master at the date of making of this Order but so that it shall not be necessary for the undertaker to obtain any other consent from the Port Authority unless this Part of this Schedule so provides.

43. Unless otherwise agreed in writing, any difference which may arise between the undertaker and the Port Authority under this Part of this Schedule (other than under paragraphs 21 and 42 or a difference as to the meaning or construction of this Part of this Schedule) shall be settled by arbitration in accordance with article 54 of this Order.

44. In this Part of this Schedule—

“accumulation” means any accumulation of silt or other material which constitutes an impediment to navigation;

“construction” includes execution and placing, maintenance, extension, improvement, enlargement, relaying and renewal and “constructed” shall be construed accordingly;

“erosion” means any erosion of the bed or banks of the river or other structure of whatever nature;

“plans” includes arrangements, sections, descriptions, drawings and specifications;

“the river” means the River Tyne; and

“tidal work” means so much of any temporary or permanent work authorised by this Order (which includes the demolition of any structure, any removal of gravel or other material, any dredging or similar work, and any geotechnical investigations that may be undertaken) as is in, on, under or over—

(a) the surface of land below the level of high water spring tides forming part of the river; or

(b) any land owned, occupied or used by the Port Authority for operational purposes.

PART 4

PROTECTION OF TELECOMMUNICATIONS UNDERTAKERS

45.—(1) The provisions of this Part of this Schedule shall have effect for the protection of each of the bodies referred to in this Part unless, in the case of any such body, it is otherwise agreed in writing between the undertaker and the body concerned.

(2) In this Part of this Schedule—

“BT” means British Telecommunications PLC;

“C&W” means Cable & Wireless UK;

“installation” shall include construction and “construct” shall be construed accordingly; and

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(a).

(a) 2003 c. 21.

46. The temporary stopping up or diversion of any street under article 8 shall not affect any right of a public communications provider under paragraph 9 of the Electronic Communications Code (the “Code”), contained in Schedule 2 to the Telecommunications Act 1984(a) as amended by Schedule 3 to the Communications Act 2003, in respect of any apparatus which at the time of the temporary stopping up or diversion is in that street.

47. If BT or C&W suffer damage in consequence of the construction, use or failure of the authorised works or any subsidence resulting from the works, the undertaker shall pay the cost reasonably incurred by BT or C&W respectively in making good such damage, and shall indemnify BT or C&W against claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by BT or C&W by reason or in consequence of any such damage, but—

- (a) nothing in this paragraph shall impose any liability on the undertaker with respect to any damage to the extent that such damage is attributable to any act or omission of BT or C&W, their officers, servants, contractors or other agents; and
- (b) BT and C&W shall give to the undertaker reasonable notice of any claim, demand or proceedings and shall make no settlement or compromise thereof without the consent of the undertaker, such consent not to be unreasonably withheld.

48. Nothing in this Order shall affect any right of a public communications provider under the Code.

PART 5

PROTECTION OF NEXUS

49.—(1) The provisions of this Part of this Schedule shall, unless otherwise agreed in writing between Nexus and the undertaker, have effect for the protection of Nexus.

(2) In this Part of this Schedule—

“construction” includes execution, demolition, placing, alteration, reconstruction and maintenance and “construct” and “constructed” have corresponding meanings;

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

“maintenance” means works of maintenance and repair that are material to the structures and safe operation of railway property;

“Nexus” means the Tyne and Wear Passenger Transport Executive;

“Nexus works and apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised works) which are owned or used by Nexus for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications;

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

“railway property” means any railway belonging to Nexus, any works, apparatus and equipment of Nexus connected with any such railway and any land or premises belonging to or used by Nexus for the purposes of any such railway, works, apparatus or equipment;

“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 in any way adversely affect, railway property; and

“subsidiary” has the same meaning as in section 736 of the Companies Act 1985(b).

50.—(1) The undertaker shall not exercise the powers conferred by article 16 or the powers conferred by section 11(3) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of Nexus.

(2) The undertaker shall not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Nexus.

(3) Except with the consent of Nexus, the undertaker shall not under the powers of Part 3 of this Order—

- (a) acquire or enter upon,
- (b) take or use, whether temporarily or permanently,
- (c) acquire any new right over, or
- (d) acquire any existing right of Nexus relating to,

any railway property.

(4) Where Nexus is asked to give its consent pursuant to sub-paragraph (1), (2), or (3), such consent shall not be unreasonably withheld but may be given subject to reasonable conditions.

(a) 1984 c. 12. Schedule 2 was amended by the New Roads and Street Works Act 1991, Schedule 8, paragraphs 113 to 117 and the Communications Act 2003.

(b) 1985 c. 6.

51.—(1) The undertaker shall, before commencing construction of any specified work, supply to Nexus proper and sufficient plans of that work for the reasonable approval of the engineer and shall not commence such construction of the 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, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Nexus 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 any protective works (whether temporary or permanent) which in his reasonable opinion should be carried out before the commencement of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of any railway belonging to Nexus (including any relocation of works, apparatus and equipment necessitated by a specified work), and such protective works as may reasonably be necessary for those purposes shall be constructed by Nexus or by the undertaker, if Nexus so desires, with all reasonable dispatch and the undertaker shall not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to his reasonable satisfaction.

(4) The engineer shall inspect the protective works and notify the undertaker that they have been completed to his reasonable satisfaction, or otherwise, as soon as reasonably practicable after they have been completed.

52.—(1) Any specified work and any protective work specified pursuant to paragraph 51(3) shall, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 51;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway belonging to Nexus or the traffic thereon and the use by passengers of railway property,

and, if any damage to the railway property or any such interference or obstruction is caused or takes place in consequence of the construction of a specified work, the undertaker shall, notwithstanding any such approval, make good such damage and shall pay to Nexus all reasonable expenses to which Nexus may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(2) Nothing in this paragraph shall impose any liability on the undertaker with respect to any damage, cost, expense or loss attributable to the negligence of Nexus or its servants, contractors or agents and any liability to the undertaker under this paragraph shall be reduced proportionately to the extent to which any damage, cost, expense or loss is attributable to the negligence of Nexus or its servants, contractors or agents.

53. The undertaker shall—

- (a) at all reasonable times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as he may reasonably require with regard to a specified work or the method of constructing it.

54. Nexus shall at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Nexus under this Part of this Schedule during their construction and Nexus shall supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

55.—(1) If any alterations or additions, either permanent or temporary, to railway property are reasonably necessary during the a period of 12 months after the new tunnel is opened to traffic, in consequence of the construction of a specified work, and Nexus gives to the undertaker reasonable notice of its intention to carry out any such alterations or additions specifying the alterations or additions to be carried out, the undertaker shall pay to Nexus the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Nexus in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) The engineer shall, in respect of the capitalised sums referred to in this paragraph and paragraph 56(a), provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(3) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving shall be set off against any sum payable by the undertaker to Nexus under this paragraph.

56. The undertaker shall repay to Nexus all reasonable fees, costs, charges and expenses reasonably incurred by Nexus—

- (a) in constructing any protective works under the provision of paragraph 51(3) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the employment or procurement of the services of any inspectors, supervisory staff, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, monitoring, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work and to ensure the continued safe and economic operation of the railway undertaking of Nexus (including any relocation of works, apparatus and equipment necessitated by a specified work) and the comfort and safety of passengers;
- (c) in respect of any special traffic working resulting from any speed restrictions which may, in the reasonable opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work, or from the substitution or diversion of services which may be reasonably necessary for the same reason;
- (d) in respect of any additional temporary lighting of railway property in the vicinity of a specified work, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work; and
- (e) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by him of the construction of a specified work.

57. If at any time after the completion of a specified work, not being a work vested in Nexus, Nexus gives notice to the undertaker informing it that the state of maintenance of the specified work appears to be such as adversely affects the operation of railway property, the undertaker shall, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

58.—(1) The undertaker shall pay to Nexus all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Nexus—

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

and the undertaker shall indemnify Nexus from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission; and the fact that any act or thing may have been done by Nexus on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under this supervision shall not (if it was done without negligence on the part of Nexus or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Nexus shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of the undertaker.

(3) Any liability of the undertaker under this paragraph shall be reduced proportionately to the extent to which any cost, charge, damage, expense, claim, demand or loss is attributable to the negligence of Nexus or its servants, contractors or agents.

59. In the assessment of any sums payable to Nexus under this Part of this Schedule there shall not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Nexus if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

60. The undertaker and Nexus may enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the deposited plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Nexus relating to any railway property.

PART 6

PROTECTION OF NETWORK RAIL INFRASTRUCTURE LTD

Interpretation

61. In this Part of this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail Infrastructure Ltd for the purpose in question;

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

“NRI” means Network Rail Infrastructure Ltd;

“Network Rail” means NRI and any associated company of NRI which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 736 of the Companies Act 1985(a)) the holding company of NRI, a subsidiary of NRI or another subsidiary of the holding company of NRI;

“railway property” means any railway belonging to NRI and any works, apparatus and equipment belonging to Network Rail connected with any such railway and includes any land held or used by Network Rail for the purposes of such railway or works, apparatus or equipment; and

“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 in any way adversely affect, railway property.

Powers requiring consent of NRI

62.—(1) The undertaker shall not under the powers conferred by this Order acquire or use, or acquire new rights over, any railway property unless such acquisition or use is with the consent of NRI.

(2) The undertaker shall not exercise the powers conferred by article 16 or the powers conferred by section 11(3) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of NRI.

(3) The undertaker shall not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of NRI.

(4) The undertaker shall not exercise the powers conferred by section 271 or 272 of the Town and Country Planning Act 1990, as applied by Schedule 11 to this Order, in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of NRI.

(5) Where NRI is asked to give its consent pursuant to sub-paragraph (1), (2), (3) or (4) such consent shall not be unreasonably withheld or delayed but may be given subject to reasonable conditions.

Fencing

63. Where so required by the engineer the undertaker shall to the reasonable satisfaction of the engineer fence off any specified work or take such other steps as the engineer may reasonably require to be taken for the purpose of separating that work from railway property, whether on a temporary or permanent basis or both.

Approval of plans

64.—(1) The undertaker shall before commencing construction of any specified work supply to NRI proper and sufficient plans of that work for the reasonable approval of the engineer and shall not commence such construction of the 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 have been supplied to NRI 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) If within 56 days after such plans have been supplied to NRI, NRI gives notice to the undertaker that NRI desires itself to construct any part of the specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of NRI then, if the undertaker desires such part of the specified work to be constructed, NRI shall construct it (together with any adjoining part of the specified work which the undertaker reasonably requires to be constructed in one operation with those works) with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled as aforesaid and under the supervision (where appropriate and if given) of the undertaker.

(a) 1985 c. 6.

(4) Upon signifying his approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before the commencement of a specified work to ensure the safety or stability of railway property, the continuation of safe and efficient operation of the railways of NRI or the services of operators using the same (including any relocation of works, apparatus and equipment necessitated by a specified work), and such protective works as may be reasonably necessary for those purposes shall be constructed by NRI or by the undertaker, if NRI so desires, with all reasonable dispatch and the undertaker shall not commence the construction of the specified work until the engineer has notified the undertaker that the protective works have been completed to his reasonable satisfaction.

(5) In the event of NRI not constructing or completing any part of a specified work pursuant to paragraph (3) with all reasonable dispatch and to the reasonable satisfaction of the undertaker in accordance with such programme as may be agreed with the undertaker or settled by arbitration, NRI shall pay compensation to the undertaker for any loss which it may sustain as a result.

Construction of specified works

65.—(1) Any specified work (together with any protective works specified by the engineer pursuant to paragraph 64(4)) 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;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of NRI or the traffic thereon;

and, if any damage to railway property or any such interference or obstruction is caused or takes place in consequence of the construction of a specified work, the undertaker shall, notwithstanding any such approval, make good such damage and shall pay to NRI all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(2) Nothing in this paragraph shall impose any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents.

Access

66. The undertaker shall—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as he may reasonably require with regard to a specified work or the method of constructing it.

67. NRI shall at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by NRI under this Part of this Schedule during their construction and shall supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

Alterations, etc. to railway property

68.—(1) If during the construction of a specified work or during a period of 12 months after the completion of that work any alterations or additions, either permanent or temporary, to railway property are reasonably necessary in consequence of the construction of a specified work in order to ensure the safety of railway property or the continued safe and efficient operation of the railways of NRI, and NRI gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which shall be specified in the notice), the undertaker shall pay to NRI the reasonable cost of those alterations or additions including, in respect of any such alterations or additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) The engineer shall, in respect of the capitalised sums referred to in this paragraph and paragraph 69(a), provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(3) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving shall be set off against any sum payable by the undertaker to NRI under this paragraph.

Repayment of Network Rail's fees etc.

69. The undertaker shall repay to NRI all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 64(3) or in constructing any protective works under the provisions of paragraph 64(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works; and
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by him of the construction of a specified work and any protective works.

Maintenance of specified works

70. If at any time after the completion of a specified work, not being a work vested in Network Rail, NRI gives notice to the undertaker informing it that the state of maintenance of the specified work appears to be such as adversely affects the operation of railway property, the undertaker shall, on receipt of such notice, take such steps as may be reasonably necessary to put the specified work in such state of maintenance as not adversely to affect the operation of railway property.

Illuminated signs etc.

71. The undertaker shall not provide any illumination or illuminated sign on or in connection with a specified work in the vicinity of any railway belonging to NRI unless it shall have first consulted NRI and it shall comply with NRI's reasonable requirements for preventing confusion between such illumination or illuminated sign and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

Alterations etc. to railway property : repayment of additional expenses

72. Any additional expenses which Network Rail may reasonably incur in altering reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work shall, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to NRI.

Indemnity

73.—(1) The undertaker shall be responsible for and make good to NRI all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction or maintenance of a specified work or the failure thereof; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

and the undertaker shall indemnify Network Rail from and against all claims and demands arising out of or in connection with any specified work or any such failure, act or omission as aforesaid; and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph.

(2) NRI shall give the undertaker 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 the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) shall include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between NRI and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, NRI shall promptly pay to each train operator the amount of any sums which NRI receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay NRI the relevant costs shall, in the event of default, be enforceable directly by the train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

“relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail’s rail network as a result of the construction, maintenance or failure of any specified work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993(a).

74. In the assessment of any sums payable under this Part of this Schedule there shall not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this part of this Schedule or increasing the sums so payable.

75. The undertaker and NRI may enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of NRI relating to any railway property.

PART 7

PROTECTION OF ELECTRICITY AND GAS UNDERTAKERS

Interpretation

76.—(1) In this Part of this Schedule—

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

“apparatus” means—

- (a) in the case of an electricity company, electric lines or electrical plant (as defined in the Electricity Act 1989(b)) belonging to or maintained by that company; and
- (b) in the case of a gas company, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of the conveyance of gas;

and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus; but the provisions of paragraphs 78 to 86 do not apply to apparatus in respect of which the relations between the undertaker and the companies are regulated by the provisions of Part III of the 1991 Act;

“company” means any of the following, namely, a public electricity supplier within the meaning of Part I of the Electricity Act 1989 and a gas transporter within the meaning of Part I of the Gas Act 1986(c); and, in relation to any apparatus, means the company to whom it belongs or by whom it is maintained;

“construction” includes execution, placing, alteration and reconstruction; and “construct” and “constructed” have corresponding meanings;

“functions” includes powers and duties;

“goods” includes electricity supplied by a public electricity supplier and gas conveyed by a gas transporter;

“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; and

“plans” includes sections and method statements.

(2) The provisions of Schedule 11 to this Order shall not apply in relation to apparatus to which this Part of this Schedule applies.

Temporarily stopped up streets, etc: maintenance of apparatus

77. Notwithstanding the temporary stopping up or diversion of any highway pursuant to article 8, a company 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 or use any apparatus which at the time of the stopping up or diversion was in that highway provided that this provision shall not apply where alternative apparatus has been installed to replace the apparatus in question and is in operation or the apparatus is otherwise redundant.

(a) 1993 c. 43.

(b) 1989 c. 29.

(c) 1986 c. 44. as amended by the Utilities Act 2000 (c. 27), section 76.

Acquisition of apparatus

78. Notwithstanding anything in this Order or shown on the deposited plans the undertaker shall not acquire any apparatus or operational land belonging to a company otherwise than by agreement or consent of that company which shall not be unreasonably withheld or delayed but may be given subject to reasonable conditions.

Removal of apparatus: alternative apparatus

79.—(1) If, in the exercise of the powers of this Order, the undertaker 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 a company to maintain that apparatus in that land shall not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the company in question.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it shall give to the company 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 and in that case (or if in consequence of the exercise of any of the powers of this Order a company reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (3), afford to the company the necessary facilities and rights (including for the avoidance of doubt legal easements satisfactory to the company) for the construction of alternative apparatus in other land of the undertaker and thereafter for the retention and maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, the company in question shall, on receipt of a written notice to that effect from the undertaker, forthwith use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) The obligations imposed by sub-paragraph (3) shall not extend to the exercise by the company of any power to acquire compulsorily any land or rights in land.

(5) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between the company in question and the undertaker or in default of agreement settled by arbitration pursuant to article 54.

(6) The company in question shall, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 54, and after the grant to the company 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 the undertaker to be removed under the provisions of this Part of this Schedule.

(7) Notwithstanding anything in sub-paragraph (6), if the undertaker gives notice in writing to the company 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 the undertaker, that work may, with the prior written consent of the company (which shall not be unreasonably withheld and shall be subject to any such conditions as are reasonable and proper to protect the apparatus), in lieu of being executed by the company be executed by the undertaker with all reasonable despatch under the superintendence, if given, and to the reasonable satisfaction of the company.

(8) Nothing in sub-paragraph (7) shall authorise the undertaker to execute the actual 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 600 millimetres of the apparatus where the apparatus is operating or only capable of operating at below 7 bar pressure or within 1,500 millimetres of the apparatus where the apparatus is operating or capable of operating at or in excess of 7 bar pressure.

80.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a company facilities and rights for the construction, and maintenance, in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the undertaker and the company in question or in default of agreement settled by arbitration in accordance with article 54.

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in or along the tunnel crossing or adjacent to any other of the authorised works, the arbitrator shall—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the tunnel crossing and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker or the traffic in the tunnel crossing; and

(b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to any terms and conditions applicable to the apparatus for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the company 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 the undertaker to that company as appears to him to be reasonable having regard to all the circumstances of the particular case.

Protection of apparatus

81.—(1) Not less than 56 days before commencing the execution of any works of the type referred to in paragraph 79(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 79(2), the undertaker shall submit to the company 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 company for the alteration or otherwise for the protection of the apparatus, or for securing access thereto, and the company shall be entitled by its officer to watch and inspect the execution of those works.

(3) Any requirements made by a company 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 received by it.

(4) If a company in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker reasonably requires the removal of any apparatus and gives written notice to the undertaker 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 the undertaker under paragraph 79(2).

(5) Nothing in this paragraph shall preclude the undertaker 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 in lieu of the plan, section and description previously submitted, and thereupon the provisions of this paragraph shall apply to and in respect of the new plan, section and description.

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

Stopped up highways: access to apparatus

82. Where, by reason of this Order, any part of any highway in which any apparatus is situated ceases to be part of a highway a company may exercise the same rights of access to such apparatus as it enjoyed immediately before the coming into force of this Order and the undertaker will grant to the company legal easements satisfactory to the company in respect of such apparatus and access thereto but nothing in this paragraph shall affect any right of the company or of the undertaker to require removal of such apparatus under this Part of this Schedule or the power of the undertaker to execute works in accordance with paragraph 81.

Repayment of expenses

83.—(1) Subject to the following provisions of this paragraph, the undertaker shall repay to a company the reasonable expenses incurred by that company 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 79(2).

(2) There shall be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.

(3) If in pursuance of the provisions 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, 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 the undertaker or, in default of agreement, is not determined by arbitration to be necessary, then, if such placing 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 company in question by virtue of sub-paragraph (1), shall be reduced by the amount of that excess.

- (4) For the purposes of sub-paragraph (3)—
- (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.

Indemnity

84.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works as are referred to in paragraph 79(2) any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a company or there is any interruption in any service provided or in the supply or conveyance of any goods by the company, the undertaker shall—

- (a) bear and pay the cost reasonably incurred by that company in making good such damage or restoring the supply or conveyance; and
- (b) indemnify the company against all claims, demands, proceedings, costs, damages and expenses which may be made against, or recovered from, or incurred by it,

by reason or in consequence of any such damage or interruption or exercise by the undertaker of its powers pursuant to this Order.

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

(3) A company shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without the consent of the undertaker 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.

Payment for redundant apparatus

85.—(1) Where, by reason of the stopping up of any highway pursuant to this Order, any apparatus belonging to a company and laid or placed in such highway or elsewhere is rendered derelict or unnecessary, the undertaker shall, subject to sub-paragraph (2), pay to the company the value of such apparatus (which shall then become the property of the undertaker) and the reasonable cost of and any costs 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) The undertaker shall not under the provisions of this paragraph be required to pay to a company the value of any apparatus rendered derelict or unnecessary if, to the reasonable satisfaction of the company, other apparatus has at the expense of the undertaker been provided and laid and made ready for use in substitution for the apparatus so rendered derelict or unnecessary.

Existing enactments and agreements

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

PART 8

PROTECTION FOR SEWERAGE AND WATER UNDERTAKERS

87. In this Part of this Schedule—

“alteration” includes the provision of alternative means of operation or the diversion of any apparatus;

“apparatus” means—

- (a) mains, pipes or other apparatus belonging to, or maintained by, the company for the purposes of water supply; and
- (b) any sewer, drain or works vested in the company under the Water Industry Act 1991^(a) and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works;

(a) 1991 c. 56.

and includes any structure in which apparatus is or is to be lodged or which gives or will give access to such apparatus;

“the company” means Northumbrian Water Limited or its successor for the time being in its capacity as either a water undertaker or a sewerage undertaker within the meaning of the Water Industry Act 1991;

“construction” includes execution, placing, altering, replacing, relaying and removal and, in its application to works which include or comprise any operation, means the carrying out of that operation;

“in” in a context referring to apparatus in land includes under, over, across, along or upon land; and

“specified work” means so much of the authorised works as will or may be situated over or within 15 metres (or 200 metres where explosives are used) measured in any direction of any apparatus, or (wherever situated) as will or may impose any load directly upon any apparatus.

No application where street works code applies

88. This Part of this Schedule (other than paragraphs 89 and 92) shall not apply to anything done or proposed to be done in relation to or affecting any apparatus in so far as the relations between the undertaker and the company are regulated by the provisions of Part III of the 1991 Act.

Disapplication of Schedule 11 in part

89. Paragraphs 1(1) and 2 of Schedule 11 to this Order shall not apply in relation to apparatus to which this Part of this Schedule applies and paragraph 1(3) and (4) of that Schedule shall have effect as if they referred to apparatus removed under this Part of this Schedule.

Acquisition of apparatus etc.

90. Notwithstanding anything in the Order or shown on the deposited plans, the undertaker shall not acquire from the company any apparatus or land pursuant to the Order otherwise than by agreement or with the company’s consent which shall not be unreasonably withheld or delayed but may be given subject to reasonable conditions.

Exercise of powers respecting trial holes

91. The undertaker shall not, in the exercise of the powers of section 11(3) of the 1965 Act, as applied by this Order, or of article 16, make any trial holes which interfere with any apparatus without the consent of the company (which shall not be unreasonably withheld).

Access

92.—(1) The undertaker shall ensure that the construction of the authorised works does not prevent or materially obstruct access (including access by heavy goods vehicles) to or from either of the company’s sewage treatment works at Howdon or Jarrow.

(2) If in consequence of the exercise of the powers of the Order the access to any apparatus is materially obstructed the undertaker shall provide reasonable alternative means of access to such apparatus which is not materially less convenient to the access enjoyed by the company prior to the obstruction.

(3) Where, in consequence of this Order, any part of a highway in which any apparatus is situated ceases to be part of a highway, the company may exercise the same rights of access to such apparatus as it enjoyed immediately before the making of this Order, but nothing in this sub-paragraph shall prejudice or affect the right of the undertaker to make provision for the alteration or removal of such apparatus in submitting plans under paragraph 95.

(4) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 8, the company shall be at liberty at all times after giving reasonable notice except in a case of urgency to construct and do all such works and things in, upon or under any such highway as may be reasonably necessary to enable it to maintain, protect, or use any apparatus which at the time of the stopping up or diversion was in that highway.

Condition surveys

93.—(1) Before commencing the construction or renewal of any specified work and again not later than 6 months after their completion, the undertaker shall procure in liaison with the company and to the company’s reasonable satisfaction a survey of the condition of any apparatus liable to be affected.

(2) A copy of the report and any other information resulting from each such survey shall be supplied directly to the company.

Prior investigation

94.—(1) Prior to the submission of plans pursuant to paragraph 95, the undertaker shall commission the company or such other body as the company acting reasonably may approve to undertake on behalf of the undertaker an investigation of any apparatus reasonably likely to be affected by the specified works.

- (2) The investigation undertaken for the purposes of this paragraph will—
- (a) include appropriate monitoring of flows in different conditions to establish the loading and capacity of sewers, drains and associated works forming part of such apparatus;
 - (b) have regard to the need to maintain existing services without any lowering in their performance and to the desirability of securing that sewers operate on the basis of gravity flows;
 - (c) identify such works to be designed by the undertaker as may be reasonably necessary for the alteration and protection of any apparatus which is the subject of such an investigation; and
 - (d) where undertaken by the company be carried out with all reasonable expedition on behalf of the undertaker and delivered to the undertaker together with all surveys, models, reports, monitoring data and the like used in the investigation upon its completion.

Plan approval

95.—(1) Without prejudice to the other provisions of this Part of this Schedule, before commencing the construction or renewal of any specified work, and in the case of any specified work of a temporary nature its removal, the undertaker shall submit to the company plans as described in sub-paragraph (2) (“the plans”) and shall not commence that work until the company has signified in writing its approval of those plans.

(2) The plans to be submitted to the company 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 apparatus within 15 metres of that work (or 200 metres where explosives are to be used) or upon which the specified work will impose a load and shall include detailed drawings of any works for alteration or replacement or protection of such apparatus which the undertaker may propose.

(3) For the purpose of the preparation of the plans and subject to such reasonable requirements as it may specify, the company shall promptly upon the undertaker’s reasonable request permit the undertaker to have access to plans in its possession and to any of its apparatus.

(4) Any approval of the company 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 42 days of the submission of plans for approval.

(5) Prior to their approval under sub-paragraph (1), the company may require such modifications to be made to the plans as may be reasonably necessary for the alteration or replacement of apparatus, to secure apparatus and the remainder of its undertaking as a sewerage undertaker and water undertaker against interference or risk of damage and to provide and secure reasonably proper and convenient means of access to apparatus and its sewage treatment works.

96.—(1) The specified works shall be constructed and in the case of any temporary work removed in accordance with plans approved, or deemed to be approved, or settled by arbitration, as the same may be amended from time to time by agreement between the undertaker and the company, and in the construction and removal of the specified works, the undertaker shall comply with all reasonable requirements of the company (which shall be given as soon as reasonably practicable) and shall provide new, altered or substituted apparatus or works for the protection of apparatus and the remainder of its undertaking as a sewerage undertaker and water undertaker, in such manner as the company may reasonably require, by way of replacement provision for or for the proper protection of, and for preventing injury or impediment to, any such apparatus and the remainder of its undertaking by reason of the specified works.

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

(3) Where works are constructed under sub-paragraph (1) by the company, they shall be constructed with all reasonable despatch and also to the reasonable satisfaction of the undertaker.

(4) When works for the provision of any such new, altered or substituted apparatus, or any such protective work forming part of any such new, altered or substituted apparatus or any existing apparatus, have been completed under this Part of this Schedule to the reasonable satisfaction of the company, they shall be vested in the company forthwith but shall be maintainable by the undertaker until a period of 12 months has elapsed and the company or an engineer appointed by the company acting reasonably has issued a certificate of final inspection of the new, altered or substituted apparatus.

97.—(1) Subject to the following provisions of this Part of this Schedule, the undertaker shall be liable to make good, or, if the company so decides, to repay to the company any reasonable expense reasonably incurred by the company in making good, all injury or damage to any apparatus (except in so far as such apparatus 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 relation to any specified works and the provision of any new, altered or substituted apparatus or any protective work under this Part of this Schedule and shall pay to the company any reasonable additional expense to which it may be put in the maintenance, management or renewal or any new, altered or substituted apparatus which may be necessary in consequence of the construction of any specified work save to the extent that sub-paragraph (6) applies provided that the undertaker may at its request pay a capitalised sum to the company in settlement of any such claim by the company representing the reasonable additional expense to which the company reasonably expects to be put.

(2) The company shall, in respect of the capitalised sums referred to in sub-paragraph (1) provide such details of the formula by which those sums should be calculated as the undertaker may reasonably require.

(3) The undertaker shall indemnify the company against all actions, claims, demands, costs, expenses, damages or loss which may be made on or against the company which the company may incur or have to pay or which it may sustain in consequence of the construction of a specified work or of the failure or want of repair of a specified work or any subsidence caused by any specified work or in consequence of any act or omission of the undertaker, their contractors, agents, workmen or servants, whilst engaged upon the specified work and any new, altered or substituted apparatus or any protective work.

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

(5) Nothing in sub-paragraph (1) or (3) shall impose any liability on the undertaker in respect of any damage to the extent that it is attributable to the act, neglect or default of the company, its officers, servants, or, if not the undertaker, its contractors or agents.

(6) If pursuant to the provisions of this Part of this Schedule—

- (a) alternative apparatus of better type, or 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 alternative apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

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 the undertaker or, in default of agreement, is not determined by arbitration to be necessary having regard, among other things, to the nature of the authorised works, then, if it involves cost in the construction of works under paragraph 92 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 sub-paragraph would be payable to the company by virtue of sub-paragraph (1) shall be reduced by the amount of that excess.

(7) For the purposes of sub-paragraph (6), 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 except in a case where the apparatus as so extended serves a purpose (either additional to or instead of that served by the existing apparatus) which was not served by the existing apparatus.

(8) An amount which apart from this sub-paragraph would be payable to the company in respect of works by virtue of this paragraph 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 company any financial benefit by deferment of the time for renewal of the apparatus or of the system of which it forms part in the ordinary course, be reduced by the amount which represents that benefit.

(9) In any case where work is carried out by the undertaker pursuant to paragraph 92 and, if such work had been carried out by the company, the repayment made to the company under this paragraph would fall to be reduced pursuant to sub-paragraphs (4) to (6), the company shall pay to the undertaker such sum as represents the amount of that reduction.

98.—(1) An officer of the company duly appointed for the purpose may, at any reasonable time and, if required by the undertaker, under their supervision and control, enter upon and inspect any specified work or any other works constructed under this Part of this Schedule but may not give instructions to any person engaged in or about the specified works except the undertaker or such person as it may from time to time nominate.

(2) The approval by the company 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 company, its officers, servants, or, if not the undertaker, its contractors or agents) exonerate the undertaker from any liability or affect any claim for damages by the undertaker.

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

SCHEDULE 11

Articles 5, 7 and 47

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 land acquired or appropriated by the undertaker 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 extinguishments 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 a public communications provider 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 the undertaker 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 the undertaker 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.

(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 1991 Act applies.

(6) In this paragraph—

“the 1990 Act” means the Town and County Planning Act 1990(a).

“public communications provider” has the same meaning as in section 151 of the Communications Act 2003(b) and includes a person to whom the Code has been applied pursuant to section 106 of the Communications Act 2003; and

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

Apparatus of statutory undertakers etc. in stopped up streets

2.—(1) Where a street is stopped up under article 7 of 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 article 7 of 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 the undertaker, shall—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the statutory 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.

(a) 1990 c. 8.
(b) 2003 c. 21.
(c) 1980 c. 66.

- (3) Subject to the following provisions of this paragraph, the undertaker shall pay to any statutory utility an amount equal to the cost reasonably incurred by the statutory 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,
 - (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 the undertaker, 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 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 would, if carried out by a highway authority, constitute major highway works required for the purposes of Part III of the 1991 Act, but instead—
- (a) the allowable costs of the relocation works shall be determined in accordance with section 85 of the 1991 Act (sharing of costs of necessary measures) and any regulations for the time being having effect under that section, and
 - (b) the allowable costs shall be borne by the undertaker 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 1991 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 a public communications provider as defined in paragraph 1(6).

Railway and navigation undertakings

3.—(1) Subject to the following provisions of this paragraph, the powers under article 5 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 1991 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 or delayed.

(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.

SCHEDULE 12

Article 49

APPLICATION OF LOCAL LEGISLATION

1. Section 53(4), (6), (7), (8), (9), (10), (12) and (13) of the Tyne Tunnel Act 1946(a) shall not apply to works carried out under the powers conferred by this Order.
2. Sections 42 to 48 of and Schedule 2 to the Tyne and Wear Act 1976(b) shall not apply to works carried out under the powers conferred by this Order.
3. Articles 5 to 7 of the Port of Tyne Harbour Revision Order 2001(c) shall not apply in respect of activities carried out under the powers conferred by this Order.

SCHEDULE 13

Article 50

ENACTMENTS REPEALED AND CEASING TO HAVE EFFECT

<i>Chapter</i>	<i>Short Title</i>	<i>Extent of repeal</i>
1946 c. xl.	Tyne Tunnel Act 1946	Sections 46, 48
1976 c.xxxvi.	Tyne and Wear Act 1976	Sections 12, 14, 19, 21, 22, 24, 25 and 27

SCHEDULE 14

Article 42

LEVEL OF TOLLS

PART 1

Initial toll level

1. On and from the appointed day the tolls chargeable in respect of any vehicle or class of vehicles shall be at such levels as subsist on the day prior to the appointed day and shall remain at that level until revised in accordance with the following provisions of this Schedule.

Revision of toll levels between appointed day and the concession toll date

2.—(1) The tolls payable in respect of any vehicle or class of vehicles set out in the 2001 Order may be revised by the undertaker between the appointed day and the day prior to the concession toll date provided that no more than one revision may be made in respect of any such vehicle or class of vehicles in any period of 12 months.

(2) No revision of tolls pursuant to this paragraph shall result in a toll which exceeds the specified limits.

(3) In this paragraph—

“2001 Order” means the Tyne Tunnel (Revision of Tolls and Traffic Classification) Order 2001(d) ;

“class 2 vehicle” means a vehicle comprised in Class 2 set out in the 2001 Order;

“non-class 2 vehicle” means any vehicle other than a Class 2 vehicle comprised in any class set out in the 2001 Order; and

“specified limits” means—

(a) in respect of a class 2 vehicle a toll which is 80 pence higher than the toll payable in respect of such a class 2 vehicle under the 2001 Order at the appointed day; and

(b) in respect of a non-class 2 vehicle at any time, a toll which is twice the amount payable in respect of such a class 2 vehicle.

3.—(1) Whenever the undertaker proposes to revise the amount of tolls that may be levied in respect of any vehicle or class of vehicles pursuant to paragraph 2 the undertaker shall publish in at least one local newspaper circulating in the area in which the tunnel crossing is situated, a notice substantially in the form set out in Part 2 of this Schedule.

(2) The undertaker may charge the tolls set out in a notice given under sub-paragraph (1) from the effective date.

(a) 1946 c. xl.
 (b) 1976 c. xxxvi.
 (c) S.I.2001/416.
 (d) S.I. 2001/2960.

Toll levels on and from the concession toll date

- 4.—(1) The undertaker may at any time within a period of 7 years from the appointed day—
- (a) determine the level of tolls to be chargeable from the concession toll date in respect of any vehicle or class of vehicles; and
 - (b) determine the classification of vehicles or classes of vehicles in respect of which tolls may be charged from the concession toll date.
- (2) The undertaker shall publish in at least one local newspaper circulating in the area in which the tunnel is situated, a notice substantially in the form set out in Part 2 of this Schedule stating the level of tolls and any classification of vehicles or classes of vehicles determined in accordance with sub-paragraph (1).
- (3) The undertaker may charge the tolls set out in a notice given under sub-paragraph (2) in respect of the vehicles or classes of vehicles set out in that notice from the concession toll date.
5. The undertaker may exercise its powers under paragraph 4(1) on one occasion only.
- 6.—(1) The tolls chargeable in respect of any vehicle or class of vehicles following the concession toll date shall remain at the levels determined by the undertaker pursuant to paragraph 4 unless revised in accordance with paragraph 7 or 9 or section 13 of the 1976 Act as amended by this Order.
- (2) The classification of vehicles or classes of vehicles in respect of which tolls may be charged shall remain as determined by the undertaker pursuant to paragraph 4 unless revised in accordance with section 13 of the 1976 Act as amended by this Order.
- 7.—(1) Subject to sub-paragraph (2), the amount of tolls to be charged in respect of any vehicle or class of vehicles following the concession toll date may if the undertaker so determines be revised to an amount arrived at by increasing the amount chargeable in the case of that vehicle or class of vehicles at that time by the same percentage as the percentage increase referred to in paragraph 8.
- (2) Where a toll level is to be revised in accordance with sub-paragraph (1) the amount which shall be revised is the toll level which would have been chargeable following the last revision of such toll level but for the operation of paragraph 18.
- (3) Following the revision of the toll level pursuant to sub-paragraph (1) the amount shall be further revised in accordance with paragraph 18.
8. The percentage increase referred to in paragraph 7 shall be the percentage increase between—
- (a) the retail prices index for August 2001 or, following a revision in tolls in accordance with this Schedule or section 13 of the 1976 Act as amended by this Order, the month which is 2 months before the month in which falls the date upon which the last revision in tolls took effect; and
 - (b) the retail prices index for the month 2 months prior to the month in which the change in the level of tolls is to have effect, or if no such index is available, the most recent month in respect of which the retail prices index has been published.
9. Where a revision of the level of tolls pursuant to paragraph 7 would be insufficient for the purposes set out in this paragraph the amount of tolls chargeable in respect of any vehicle or class of vehicles may if the undertaker so determines be increased to an amount required—
- (a) to pay the costs and expenses incurred in designing, constructing, managing, operating and maintaining the tunnel crossing or any costs associated with financing any of the same;
 - (b) to provide such funds as are or are likely to be necessary to discharge the obligations of the undertaker pursuant to a concession agreement;
 - (c) to pay the interest on, and repay the principal of monies borrowed in respect of, the existing tunnels;
 - (d) to make payment into any maintenance or reserve fund provided in respect of the tunnel crossing; and
 - (e) to provide funds for, to meet expenses incurred in or the cost of securing any necessary authority or consent for, and in constructing or in securing, the construction, maintenance and operation of, the new tunnel.
10. The amount of tolls to be charged in respect of any vehicle or class of vehicles may not be revised pursuant to paragraph 7 or 9 more than once in any period of 12 months.
11. The provisions of paragraphs 13 to 15 shall apply to any such revision as is referred to in paragraph 9.
- 12.—(1) Whenever the undertaker proposes to make a determination that the amount of tolls to be charged in respect of any vehicle or class of vehicles pursuant to paragraph 7 or 9 should be revised the undertaker shall publish in at least one local newspaper circulating in the area in which the tunnel is situated, a notice substantially in the form set out in Part 2 of this Schedule.

(2) Where paragraph 7 applies to any revision of tolls or paragraph 9 applies and no objections are received in the manner prescribed in paragraph 13, the undertaker may charge the tolls set out in a notice given under sub-paragraph (1) from the effective date.

Local Inquiries

13. Where paragraph 9 applies to any proposed revision and an objection is made by any person in writing and received by the undertaker on or before the expiration of 28 days from the date of the notice published in accordance with paragraph 12(1) and the objection is not withdrawn, the undertaker may not determine to revise the amount of any tolls until it has complied with the provisions of paragraphs 14 and 15.

14.—(1) Where any objections have been made in accordance with paragraph 12 the undertaker shall cause a local inquiry to be held for the purpose of considering the objections.

(2) The local inquiry shall be held by a person appointed by the Secretary of State.

(3) Subsections (2) and (3) of section 250 of the Local Government Act 1972(a) (power to summon and examine witnesses) shall apply to an inquiry held under this paragraph as they apply to an inquiry held under that section.

(4) The Tribunals and Inquiries Act 1992(b) shall apply to a local inquiry held under this paragraph as it applies to a statutory inquiry held by the Minister but as if in section 10(1) of that Act (statement of reasons for decision) the reference to any decision taken by the Minister were a reference to a decision taken by the undertaker.

(5) A local inquiry need not be held under this paragraph if all persons who have made objections have withdrawn their objections or if the Secretary of State is satisfied that a local inquiry is not necessary in the special circumstances of the case.

15.—(1) Where the undertaker has caused a local inquiry to be held the undertaker must, after considering the report of the person holding the local inquiry, either—

(a) determine that the amount of tolls shall be revised to a sum not exceeding that set out in the notice referred to in paragraph 12, or

(b) determine not to revise the amount of tolls.

(2) The undertaker may charge the tolls determined pursuant to sub-paragraph (1) from the effective date.

Further provision in respect of tolls

16. Section 13 of the 1976 Act as amended by this Order shall apply to revisions of tolls to which this Schedule applies.

17. For section 13 of the 1976 Act there shall be substituted the following—

“**13.—(1)** If at any time it is represented in writing to the Secretary of State by the county council that in the circumstances then existing or in prospect—

(a) all or any of the tolls fixed by or by virtue of this Act or the River Tyne (Tunnels) Order 2005 should be increased by more than the maximum permissible under article 42 of, and paragraph 2, 7 or 9 of Schedule 14 to, that Order, or

(b) any classification of traffic then in force for the purposes of the levying of tolls should be revised,

the Secretary of State may, if he thinks fit, make an order increasing all or any of the tolls by more than the increase authorised by that article or revising any such classification of traffic.

(2) Where in accordance with paragraphs 2, 4, 7, 9 or 15 of Schedule 14 to the River Tyne (Tunnels) Order 2005 the county council determines that the level of tolls fixed by virtue of this Act or that Order should be revised, the county council shall submit to the Secretary of State—

(a) notice of such determination;

(b) evidence of compliance with the procedural requirements of Schedule 14 to the River Tyne (Tunnels) Order 2005; and

(c) information illustrating how the revised toll has been calculated,

and the Secretary of State shall, before the expiration of 21 days from the receipt by him of such submissions which he considers to be satisfactory, and where he is also satisfied that the requirements imposed upon the county council by Schedule 14 to the River Tyne (Tunnels) Order 2005 have been complied with by the county council, make an order revising the tolls in accordance with the powers given to him by that schedule.

(a) 1972 c. 70.

(b) 1992 c. 53.

(3) (a) An order made by the Secretary of State under subsection (1) or (2) shall come into effect 28 days from the date the order is made.

(b) An order made by the Secretary of State under subsection (1) or (2) revising tolls or classifications of traffic shall cease to have effect on the coming into force of a subsequent order under subsection (1) or (2).

(4) In the exercise of the powers conferred upon him by subsection (1), the Secretary of State shall have regard to—

- (a) the financial position and future prospects of the tunnel crossing;
- (b) the desirability of providing funds for and in meeting expenses incurred in securing any necessary authority or consent for, and in securing the construction and operation of, the new tunnel;
- (c) such other matters of a transportation nature within the area as may be considered by the Secretary of State at that time to be relevant; and
- (d) such other matters of an economic, environmental or social nature within that county as may be considered by the Secretary of State at that time to be relevant.

(5) In the event of a representation being made to the Secretary of State under subsection (1) the county council shall furnish the Secretary of State with such information and particulars as the Secretary of State may require and shall publish in *The London Gazette* and in at least one local newspaper circulating in the area in which the tunnel crossing is situated, a notice stating—

- (a) the general effect of the representation;
- (b) the places at which copies of the representation may be inspected free of charge and copies thereof purchased and the price of such copies;
- (c) that within a period of 42 days from the date of the first publication of the notice, any person may object to the representation by giving notice to the Secretary of State accompanied by the grounds of his objection and sending a copy thereof to the county council; and
- (d) the Secretary of State's power to hold a local inquiry by virtue of section 63(1) of this Act.

(6) The power of the Secretary of State to hold a public inquiry under section 63(1) shall not apply in respect of orders to be made by the Secretary of State under subsection (2).

(7) The power of the Secretary of State to make an order under this section shall be exercisable by statutory instrument.”.

General Provisions as to Tolls

18. Any revision in tolls pursuant to the provisions of this Order or to the 1976 Act—

- (a) if it is neither a multiple of ten pence nor an amount which on division by ten produces a remainder of five pence shall be rounded to the nearest ten pence; and
- (b) if it is an amount which on division by ten produces a remainder of five pence shall be increased by five pence.

19.—(1) Subject to sub-paragraph (2), the references in this schedule to the retail prices index means the monthly United Kingdom index of Retail Prices (for all items) published by the Office of National Statistics.

(2) If that index is not published for any month these references shall be references to any substituted index or index figures published by that office for that month.

PART 2

THE RIVER TYNE (TUNNELS) ORDER 2005 (THE “ORDER”)

NOTICE OF PROPOSED REVISION IN TOLLS

The Tyne and Wear Passenger Transport Authority proposes to determine the tolls to be levied for use of the Tyne Tunnel Crossing in respect of the vehicles or classes of vehicles in column (a) of the table below to the amount set out in column (b) of that table.

(a) vehicle or class or vehicles	(b) toll

[Paragraph [2], [4], or [7] of Schedule 14 to the Order applies to the above revision in tolls. The revision in tolls will take effect 28 days after the Secretary of State has made an order varying tolls in accordance with section 13 of the Tyne and Wear Act 1976.] [or

[Paragraph 9 of Schedule 14 to the Order applies to the above revision in tolls. Any objections to, or other representations about, the proposals should be sent to the Clerk, The Tyne and Wear Passenger Transport Authority, [address] on or before [expiry date for objections being 28 days after the date of the notice]. An objection or representation MUST (i) be received by the Clerk on or before [expiry date for objections], (ii) be made in writing, (iii) state the grounds of the objection or representation, (iv) indicate who is making the objection or representation, and (v) give an address to which correspondence relating to the objection or representation may be sent.

The Clerk may make objections and other representations public.]

Signed _____

Date _____

For and on behalf of the Tyne and Wear Passenger Transport Authority.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises the Tyne and Wear Passenger Transport Authority to construct, operate and maintain a tunnel for vehicles beneath the River Tyne and, for that purpose, compulsorily or by agreement to acquire land and rights in land and to use land. It provides for the new tunnel and the existing vehicular and pedestrian and cycle tunnels under the River Tyne to be operated as a single undertaking and makes arrangements for the levying of tolls on those who use the new and existing tunnels in vehicles.

A copy of the works plans, land plans and book of reference mentioned in this Order and certified in accordance with article 51 of this Order may be inspected free of charge during working hours at the offices of Tyne and Wear Passenger Transport Authority at Civic Centre, Newcastle upon Tyne, NE99 2BN.

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E1066 8/2005 151066 19585