

1999 No. 2981

TRANSPORT AND WORKS, ENGLAND

The River Thames (Hungerford Footbridges) Order 1999

Made - - - - - *2nd August 1999*

Coming into force *23rd August 1999*

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Whereas an application has been made to the Secretary of State for the Environment, Transport and the Regions (“the Secretary of State”), in accordance with the Transport and Works (Applications and Objections Procedure) Rules 1992(a) made under sections 6, 7 and 10 of the Transport and Works Act 1992(b) (“the Act”), for an Order under sections 3 and 5 of the Act;

And whereas the objections to that application have been withdrawn;

And whereas the Secretary of State is satisfied that the provision of an alternative right of way for each of the streets mentioned in Part II of Schedule 4 to this Order is not required;

And whereas the Secretary of State 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(c);

And whereas notice of the Secretary of State’s determination was published in the London Gazette on 19th July 1999;

Now, therefore, the Secretary of State in exercise of the powers conferred on him by sections 3 and 5 of, and paragraphs 1, 2, 3, 4, 5, 7, 8, 10, 11, 13 and 16 of Schedule 1 to, the Act and by the Transport and Works (Description of Works Interfering with Navigation) Order 1992(d) and all other powers enabling him in that behalf, hereby makes the following Order:–

PART I

PRELIMINARY

Citation and commencement

1. This Order may be cited as the River Thames (Hungerford Footbridges) Order 1999 and shall come into force on 23rd August 1999.

Interpretation

2.—(1) In this Order–

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

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

(a) S.I. 1992/2902.

(b) 1992 c.42.

(c) 1964 c.40.

(d) S.I. 1992/3230. This order was amended by S.I. 1997/2906 but those amendments are not relevant for the purposes of this Order.

(e) 1965 c.56.

(f) 1991 c.22.

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

“the deposited plans” means the Works Plan, the Land Plans and the Footpath Plan being the plans certified by the Secretary of State under those names as the deposited plans for the purposes of this Order;

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

“the existing Hungerford footbridge” means the existing footbridge over the River Thames immediately adjoining the Charing Cross Railway Bridge in the City of Westminster and the London Borough of Lambeth;

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

“the limits of deviation” means the limits of deviation for the scheduled works shown on the deposited plan entitled “Works Plan”;

“LRT” means London Regional Transport and includes any subsidiary of London Regional Transport (within the meaning of section 763 of the Companies Act 1985(b));

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

“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 London Authority;

“the scheduled works” means the works specified in Schedule 1 to this Order or any part of them;

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

“the tribunal” means the Lands Tribunal;

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

“the undertaker” means the Lord Mayor and Citizens of the City of Westminster;

“the undertaking” means the undertaking of the undertaker in connection with 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) All directions, distances, areas and dimensions stated in any description of works, powers or lands shall be construed as if the words “or thereabouts” were inserted after each such direction and length.

PART II WORKS PROVISIONS

Principal powers

Power to construct works

- 3.—(1) Subject to paragraph (5) below, the undertaker may:
- (a) construct and maintain the scheduled works;

(a) 1980 c.66.

(b) 1985 c.6.

- (b) break out and remove such structures that are contained within the limits of deviation as may be necessary and convenient for the construction and maintenance of the scheduled works.

(2) Subject to article 4 below, the scheduled works shall be constructed in the lines or situations shown on the deposited plans and in accordance with the levels shown on the deposited sections.

(3) Subject to paragraph (4) below, the undertaker may carry out such other works (of whatever nature) as may be necessary convenient or expedient for the purposes of, in connection with or in consequence of, the construction of the scheduled works.

(4) Paragraph (3) above shall only authorise the carrying out or maintenance of works outside the limits of deviation if the works are carried out on land specified in columns (1) and (2) of Schedule 2 to this Order for the purposes specified in relation to that land in column (3) of that Schedule.

(5) The undertaker shall not carry out any work which prevents the use of the existing Hungerford footbridge by members of the public until

- (a) either Work No. 1 or Work No. 2 is open for public use; or
- (b) the undertaker has provided, within the limits of deviation, a temporary way on foot across the River Thames for members of the public.

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 deposited plan entitled “Works Plan” within the limits of deviation; and
 - (b) deviate vertically from the levels shown for those works on the deposited sections—
 - (i) to any extent not exceeding 1 metre upwards, and
 - (ii) to any such extent downwards as may be necessary or convenient but subject to the consent in writing of the Port Authority.

Streets

Power to execute street works

5.—(1) The undertaker may, for the purposes of the authorised works, enter upon so much of any of the streets specified in Schedule 3 to this Order as is within the limits of deviation and may—

- (a) break up or open the street, or any sewer, drain 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 any works required for or incidental to any works referred to in sub-paragraphs (a), (b) and (c) above.

(2) This article is subject to paragraph 2(3) of Part I of Schedule 10 and 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.

Stopping up of streets and extinguishment of rights

6.—(1) Subject to the provisions of this article, the undertaker may, in connection with the construction of the authorised works, stop up each of the streets specified in columns (1) and (2) of each Part of Schedule 4 to this Order to the extent specified in column (3) of that Part.

(2) No street specified in columns (1) and (2) of Part I of Schedule 4 to this Order (being a street to be stopped up 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) with the consent of the street authority, a temporary alternative route is provided between the commencement and termination points of the street to be stopped up until completion of the new street in accordance with sub-paragraph (a) above.

(3) Where a street has been stopped up under this article the undertaker may, without making any payment, appropriate and use for the purposes of the authorised works so much of the site of the street as is bounded on both sides by land owned by the undertaker.

(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

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

- (a) divert the traffic from the street; and
- (b) subject to paragraph (2) below, prevent all persons from passing along the street.

(2) 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.

(3) Without prejudice to the generality of paragraph (1) above, the undertaker may exercise the powers of this article in relation to the streets specified in columns (1) and (2) of Schedule 5 to this Order to the extent specified in column (3) of that Schedule.

- (4) The undertaker shall not exercise the powers of this article—
 - (a) in relation to any street specified as mentioned in paragraph (3) above 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.

(5) The provisions of the 1991 Act mentioned in paragraph (6) below and any regulations made, or code of practice issued or approved under, those provisions shall apply (with the necessary modifications) in relation to the stopping up, alteration or diversion of 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.

- (6) The provisions of the 1991 Act referred to in paragraph (5) above are—
 - section 54 (advance notice of certain works),
 - section 55 (notice of starting date of works),
 - section 59 (general duty of street authority to co-ordinate works),
 - section 60 (general duty of undertakers to co-operate),
 - section 69 (works likely to affect other apparatus in the street),
 - section 76 (liability for cost of temporary traffic regulation),
 - section 77 (liability for cost of use of alternative route), and

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

(7) The undertaker shall not stop up any part of Queen's Walk under this article unless a suitable alternative route is first provided and thereafter maintained by the undertaker to the reasonable satisfaction of the street authority.

Access to works

8. The undertaker may, for the purposes of the authorised works, form and lay out means of access or improve existing means of access in such locations within the limits of deviation shown on the deposited plans or listed in Schedule 6, within the boundaries

(a) 1961 c.33.

of the street in question, as the undertaker reasonably requires for the purposes of the authorised works 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

9.—(1) Any street to be constructed under this Order shall be completed to the reasonable satisfaction of the highway authority and shall, unless otherwise agreed, be maintained by and at the expense of 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) Where a street is altered or diverted under this Order, the altered or diverted part of the street shall when completed to the reasonable satisfaction of the street authority, unless otherwise agreed, be maintained by and at the expense of 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 as respects which the provisions of Part III of the 1991 Act apply.

Dedication and maintenance of highways

10.—(1) Each footbridge deck and each set of stairs comprised in the scheduled works shall be dedicated by the undertaker as a highway as soon as reasonably possible after completion of construction of the deck and sets of stairs comprised in the scheduled work in question.

(2) Any dedication under paragraph (1) above is subject to the rights of the Port Authority under the provisions of Part II of Schedule 10.

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) under the powers conferred by this Order;
- (b) the maintenance of the structure of any bridge or tunnel carrying a street over or under a railway;
- (c) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
- (d) the execution in the street of any of the works referred to in article 5(1) above.

(2) Such an agreement may, without prejudice to the generality of paragraph (1) above—

- (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.

Supplemental powers

Discharge of Water

12.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised works and for that purpose may lay down, take up and alter pipes and may, on any land shown within the limit line shown marked “50 metres from new construction” on the deposited plan entitled “Works Plan”, make openings into, and connections with, the 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 Thames 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) The undertaker shall take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance or oil or matter in suspension.

(5) 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).

(6) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency 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

13.—(1) Subject to the following provisions of this article, the undertaker may at its own expense and from time to time carry out such safeguarding works to any building lying within the relevant distance of any authorised works (other than works under this article), as the undertaker considers to be necessary or expedient.

(2) Safeguarding works may be carried out—

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

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

(5) Before exercising a right—

- (a) under paragraph (1) above to carry out safeguarding works to a building,
- (b) under paragraph (3) above to enter a building,
- (c) under paragraph (4)(a) above to enter a building or land, or
- (d) under paragraph (4)(b) above 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) above, specifying the safeguarding works proposed to be carried out.

(a) 1991 c.57.

(6) Where notice is served under paragraph (5)(a), (c) or (d) above, the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the safeguarding works or to enter the building or land to be referred to arbitration under article 36 below.

(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 35 of this Order, 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—

- (a) any reference to a building within a relevant distance of a work includes—
 - (i) in the case of a work under the surface of the ground, a reference to any building within the relevant distance of the point on the surface below which the work is situated; and
 - (ii) where a work has not commenced, a reference to any building within the relevant distance of the proposed site of the work;
- (b) “safeguarding works”, in relation to a building means—
 - (i) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the construction, maintenance or operation of the authorised works; and
 - (ii) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, maintenance or operation of the authorised works; and
- (c) “relevant distance”, in relation to any work, means:
 - (i) in the case of works under the surface of the ground, within the limit line shown marked “50 metres from new construction” on the deposited plan entitled “Works Plan”; and
 - (ii) in any other case, within the limit line shown marked “35 metres from new construction” on the deposited plan entitled “Works Plan”.

Power to survey and investigate land

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

- (a) survey or investigate any land shown within the limit line shown marked “50 metres from new construction” on the deposited plan entitled “Works Plan” which may be affected by the authorised works, but not any building on any such land;
- (b) without prejudice to the generality of sub-paragraph (a) above, 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) place on, leave on and remove from the land included in sub-paragraph (a) above apparatus for use in connection with the exercise of any of the powers conferred by sub-paragraph (a) or (b) above; and
- (d) enter on the land included in sub-paragraph (a) above for the purpose of exercising the powers conferred by sub-paragraph (a) or (b) above.

(a) 1961 c.33.

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

(3) Any person entering land under this article on behalf of 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) above.

(4) No trial holes shall be made under this article in a carriageway or footway without the consent of the street authority.

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

PART III

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

15.—(1) The undertaker may acquire compulsorily—

(a) so much of the land shown on the Land Plans within the limits of deviation and described in the book of reference as may be required for the purposes of the authorised works and not being land referred to in sub-paragraph (b) below, and

(b) so much of the land specified in columns (1) and (2) of Schedule 2 to this Order (being land shown on the Land Plans and described in the book of reference) as may be required for the purpose specified in relation to that land in column (3) of that Schedule;

and may use any land so acquired for those purposes connected with or ancillary to its undertaking.

(2) This article is subject to article 20(8) below.

Application of Part I of Compulsory Purchase Act 1965

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

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

(a) 1961 c.33.

(b) 1981 c.67.

Power to acquire new rights

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

(2) 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) above 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

18.—(1) The undertaker may compulsorily acquire so much of the subsoil of the land referred to in paragraph (1)(a) or (b) of article 15 above 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) Subject to paragraph (3) below, where the undertaker acquires any part of the subsoil of land under paragraph (1) above the undertaker shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) above shall not prevent section 8 of the 1965 Act or article 23 below from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or factory.

Vesting declarations

19.—(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) above, 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 below with respect to any land which is subject to a compulsory purchase order the acquiring authority shall include the particulars specified in subsection (3) below 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.

(a) 1981 c.66.

(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 15(1) above.

Temporary possession of land

Temporary use of land for construction of works

20.—(1) The undertaker may, in connection with the carrying out of the authorised works—

- (a) enter upon and take temporary possession of the land specified in columns (1) and (2) of Schedule 8 to this Order for the purposes specified in relation to that land in column (3) of that Schedule relating to the authorised works specified in column (4) of that Schedule;
- (b) remove any buildings and vegetation from that land; and
- (c) construct temporary works (including the provision of means of access) and buildings on the land.

(2) Not less than 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 any land under this article after the end of the period of one year beginning with the date of completion of the work or works specified in relation to that land in column (4) of Schedule 8 to this Order.

(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.

(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) above, 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 35 below, nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5) above.

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

- (a) acquiring new rights over any part of that land under article 17 above; or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 18 above.

(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

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

- (a) enter upon and take temporary possession of any land within the limit line shown marked “50 metres from new construction” on the deposited plan entitled “Works

(a) 1961 c.33.

- Plan” if such possession is reasonably required for the purpose of, or in connection with, maintaining the work or any ancillary works connected with it;
- (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) above 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 to carry out the maintenance works for which 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) above, 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 35 below, nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6) above.
- (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—
- (a) “the maintenance period”, in relation to a scheduled work, means the period of 5 years beginning with the date on which the work is opened for use; and
- (b) any reference to land within a specific distance of a work includes, in the case of a work under the surface of the ground, a reference to land within the specified distance of the point on the surface below which the work is situated.

Compensation

Disregard of certain interests and improvements

22.—(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 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) above “relevant land” means the land acquired from the person concerned or any other land with which he is, or was at the time when the building was erected, the works executed or the improvement or alteration made, directly or indirectly concerned.

Supplementary

Acquisition of part of certain properties

23.—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 16 above) in any case where—

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

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on 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 determine that the land subject to the notice to treat can be taken—

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

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

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

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

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

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

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

the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which 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

24.—(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 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.

(3) 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.

(4) This article does not apply in relation to any right of way to which section 271 or 272 of the Town and Country Planning Act 1990(a) (extinguishment of rights of statutory undertakers etc.) or paragraph 2 of Schedule 11 to this Order applies.

Use of subsoil

25.—(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 15(1)(b) 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 undertaker shall not be required to pay any compensation for the exercise of the powers conferred by paragraph (1) above where the street is a highway; but where the street is not a highway any person suffering 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(b).

(3) Paragraphs (1) and (2) above shall not apply in relation to—

(a) any subway or underground building; or

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

Time limit for exercise of powers of acquisition

26.—(1) Subject to paragraph (2) below, the powers conferred by this Order to acquire land or rights over land compulsorily, and the power conferred by article 20 above to enter upon and take temporary possession of land, shall cease at the end of the period of 5 years beginning on the day on which this Order comes into force.

(2) Paragraph (1) above shall not prevent the undertaker remaining in possession of land in accordance with article 20 above after the end of that period, if the land was entered and possession of it was taken before the end of that period.

(a) 1990 c.8.

(b) 1961 c.33.

PART IV

MISCELLANEOUS AND GENERAL

Saving for Trinity House

27. Nothing in this Order shall prejudice or derogate from any of the powers, rights or privileges, or the jurisdiction or authority of Trinity House.

Protection of certain persons

28.—(1) For the protection of the Environment Agency, Schedule 9 shall have effect.

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

Statutory undertakers, etc.

29. Schedule 11 to this Order shall have effect.

Regulation of footways

30. Schedule 12 to this Order shall have effect.

Application, modification and exclusion of miscellaneous enactments

31. Schedule 13 to this Order shall have effect.

Repeal of enactments

32.—(1) Part I of Schedule 14 to this Order shall have effect.

(2) For any period during which the undertaker is, pursuant to article 3(5) above, providing a temporary way on foot for members of the public across the River Thames in place of the existing Hungerford footbridge, the enactments mentioned in Part II of Schedule 14 to this Order shall be modified so as not to require the existing Hungerford footbridge to be open for use by the public.

(3) On the dedication as a highway of Work No. 1 or Work No. 2 pursuant to article 10 above, the enactments mentioned in Part II of Schedule 14 to this Order shall be repealed to the extent specified in the third column of that Part.

Certification of plans, etc.

33. 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

34.—(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) above is, if he has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and

(a) 1978 c.30.

(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

35. 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

36. Any difference under any provision of this Order (other than in relation to any matter otherwise provided for in Schedules 9, 10, 11 or a difference which falls to be determined by the tribunal) shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after notice in writing to the other) by the President of the Institution of Civil Engineers.

Byelaws

37.—(1) The undertaker may make byelaws regulating the use and operation of the authorised works, the maintenance of order on the authorised works and the conduct of all persons while on the authorised works.

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

- (a) with respect to interference with, or obstruction of, the operation or maintenance of the authorised works or other facilities provided in connection with the authorised works; and
- (b) with respect to the prevention of nuisances on the authorised works.

(3) 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.

(4) Without prejudice to the taking of proceedings for an offence included in byelaws by virtue of paragraph (3) above, if the contravention of or failure to comply with, any byelaw under this article is attended with danger or annoyance to the public, or hindrance to the undertaker in the operation of the authorised works, the undertaker may summarily take action to obviate or remove the danger, annoyance or hindrance.

(5) Byelaws under this article shall not come into operation until they have been confirmed by the Secretary of State.

(6) 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.

(7) 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.

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

(9) 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.

(10) 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.

(11) 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.

(12) 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.

Signed by Authority of the Secretary
of State for the Environment,
Transport and the Regions

A.S.D. Whybrow
Head of Charging and Local Transport Division,
Department of the Environment,
Transport and the Regions

2nd August 1999

SCHEDULES

SCHEDULE 1

Article 3

SCHEDULED WORKS

In the City of Westminster and the London Borough of Lambeth

WORK No. 1

A footbridge across the River Thames, together with new caissons and islands, incorporating stairs, lifts and lighting upstream of and supported by Charing Cross Railway Bridge together with associated structures between the northern bank of the River Thames at Ordnance Survey reference point TQ 30388031 and the southern bank of the River Thames at Ordnance Survey reference point TQ 30688017 incorporating stairs from Ordnance Survey reference point TQ 30688017 to Ordnance Survey reference point TQ 30688015.

WORK No. 2

A footbridge across the River Thames, together with new caissons and islands, incorporating stairs, lifts and lighting downstream of and supported by Charing Cross Railway Bridge together with

associated structures between the northern bank of the River Thames at Ordnance Survey reference point TQ 30428035 and the southern bank of the River Thames at Ordnance Survey reference point TQ 30708022 incorporating stairs from Ordnance Survey reference point TQ 30428035 to Ordnance Survey reference point TQ 30428036, from Ordnance Survey reference point TQ 30708022 to Ordnance Survey reference point TQ 30718023 and from Ordnance Survey reference point TQ 30708022 to Ordnance Survey reference point TQ 30718021.

WORK No. 3

A footbridge over the River Thames upstream of Charing Cross Railway Bridge together with associated supports, works to the river wall and structures between the southern bank of the River Thames at Ordnance Survey reference point TQ 30658013 and the Surrey Pier of Charing Cross Railway Bridge at Ordnance Survey reference point TQ 30618020.

WORK No. 4

A footbridge over the River Thames downstream of Charing Cross Railway Bridge together with associated supports, works to the river wall and structures between the southern bank of the River Thames at Ordnance Survey reference point TQ 30728026 and the Surrey Pier of Charing Cross Railway Bridge at Ordnance Survey reference point TQ 30648025.

WORK No. 5

Renovation and replacement of existing footbridge west of Work No. 2 and above the existing Embankment Station, between Embankment Place and Victoria Embankment together with the construction of a lift in Embankment Place such works being between Ordnance Survey reference points TQ 30398037 and TQ 30428035.

SCHEDULE 2

Articles 3 and 15

ACQUISITION OF CERTAIN LAND

<i>(1) Area</i>	<i>(2) Number of land shown on the deposited plan entitled "Land Plan"</i>	<i>(3) Purpose for which land may be acquired</i>
London Borough of Lambeth	206: access road from point A1 on Belvedere Road to Point A4 north of Charing Cross Railway Bridge to point A3 south of Charing Cross Railway Bridge including land beneath Charing Cross Railway Bridge and to point A2 on Belvedere Road.	To permit construction and maintenance of the works; to create public rights of way from the authorised works to Belvedere Road; and to facilitate maintenance upon completion of the works.

SCHEDULE 3

Article 5

STREETS SUBJECT TO STREET WORKS

<i>(1) Area</i>	<i>(2) Street subject to street works</i>
City of Westminster London Borough of Lambeth	Northumberland Avenue Villiers Street Embankment Place Victoria Embankment Queen's Walk

SCHEDULE 4

Article 6

STREETS TO BE STOPPED UP

PART I

STREETS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New street to be substituted</i>
City of Westminster	The existing Hungerford footbridge Stairway adjacent to Embankment Station South of Charing Cross Railway Bridge	So much of the existing Hungerford footbridge as is in the City of Westminster lying between Ordnance Survey reference points TQ 30428035 and TQ 30568027 Between Victoria Embankment at Ordnance Survey reference point TQ 30428036 and Hungerford Footbridge at Ordnance Survey reference point TQ 30428035	So much of Work No. 1 in Schedule 1 as is in the City of Westminster New stairway between the same points
London Borough of Lambeth	The existing Hungerford footbridge	So much of the existing Hungerford footbridge as is in the London Borough of Lambeth lying between Ordnance Survey reference points TQ 30568027 and TQ 30728021	So much of Work No. 1 in Schedule 1 as is in the London Borough of Lambeth

PART II

STREETS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

Note: The references in this Part of this Schedule to “Area” with a number shall be construed as references to land shown upon the deposited plan entitled “Footpath Plan” identified by that number.

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be affected</i>	<i>(3)</i> <i>Extent of stopping up</i>
City of Westminster	Embankment Place Victoria Embankment Northumberland Avenue	Area 101 Areas 102, 103, 104, 105, 123 Areas 108, 109
London Borough of Lambeth	Queen’s Walk	Areas 117, 118, 119, 120, 121, 122

SCHEDULE 5

Article 7

STREETS TO BE TEMPORARILY STOPPED UP

Note: In this Schedule references to points identified by letters and numbers shall be construed as references to points so marked on the deposited plan entitled “Footpath Plan”.

<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>
City of Westminster	Northumberland Avenue Victoria Embankment	Within the limits of deviation Within the limits of deviation
London Borough of Lambeth	Queen’s Walk	Between points T1 and T2

SCHEDULE 6

Article 8

ACCESS TO WORKS

Note: In this Schedule references to points identified by letters and numbers shall be construed as references to points so marked on the deposited plan entitled “Footpath Plan”.

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Description of Access</i>
London Borough of Lambeth	Point A1 on Belvedere Road to point A4 on Queen’s Walk north of Charing Cross Railway Bridge to point A3 south of Charing Cross Railway Bridge to point A2 on Belvedere Road

SCHEDULE 7

Article 17

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 above, the Land Compensation Act 1973(a) shall have effect subject to the modifications set out in sub-paragraphs (2) and (3) below.

(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 below—

- (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 below—

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

Adaptation of the 1965 Act

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

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

(2) Without prejudice to the generality of sub-paragraph (1) above, 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.

(a) 1973 c.56.

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 Thames (Hungerford Footbridges) Order 1999 (“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 interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired is vested absolutely in the acquiring authority.

7. Section 11 of the 1965 Act (powers of entry) shall be so modified as to secure that, as from the date on which the acquiring authority 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 inadvertance 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 20

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1) Area</i>	<i>(2) Number of land shown on deposited plan entitled "Land Plan"</i>	<i>(3) Purpose for which temporary possession may be taken in connection with the authorised works</i>	<i>(4) Authorised works</i>
London Borough of Lambeth	301: 46 square metres of Queen's Walk	For the provision of a working site and access for construction purposes and provision of a temporary footpath	Work No. 4
	302: 273 square metres of Queen's Walk beneath Charing Cross Railway Bridge	For the provision of a working site and access for construction purposes and provision of a temporary footpath	The scheduled works
	303: 887 square metres of Queen's Walk	For the provision of a working site and access for construction purposes and for the provision of a temporary footpath	The scheduled works

SCHEDULE 9

Article 28(1)

PROTECTION OF THE ENVIRONMENT AGENCY

1. For the protection of the Environment Agency (in this Schedule referred to as "the Agency") the provisions of this Schedule shall, unless otherwise agreed in writing between the undertaker and the Agency, have effect.

2. In this Schedule—

"construction" shall include execution, placing, altering, replacing, relaying and removal; and "construct" and "constructed" shall be construed accordingly;

"damage" shall include scouring, erosion and environmental damage and "damaged" shall be construed accordingly;

"drainage work" means any watercourse and includes any land used for providing flood storage capacity for any watercourse and any bank, wall, embankment or other structure or appliance constructed or used for land drainage, flood defence or tidal monitoring;

"the fishery" means fish in, or migrating to or from, the River Thames and the spawn, habitat or food of such fish;

"plans" shall include 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 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; and
- “watercourse” has the meaning given in section 72 of the Land Drainage Act 1991^(a).

3.—(1) Before beginning to construct the specified works and again at the written request of the Agency following their completion, the undertaker shall at its own expense and to the reasonable satisfaction of the Agency, conduct a survey of the condition of the river walls on each side of the River Thames so far as situated within 100 metres of the centreline of the Charing Cross Railway Bridge and submit a report upon their condition to the Agency.

(2) If any defects are identified in the initial survey conducted pursuant to sub-paragraph (1) above, being defects which may be affected by the construction of the specified works, the undertaker shall monitor the defects not less than once every 4 weeks, where tides permit, during the construction of the specified works in accordance with such reasonable requirements as the Agency may specify or, if the Agency reasonably requires having regard to the results of any such monitoring, at such lesser intervals as the Agency may specify.

(3) Before beginning to construct the specified works and thereafter at 2 weekly intervals until their completion, or at such greater intervals as the Agency may agree for the period following the completion of foundation works comprised in the specified works, the undertaker shall at its own expense and to the reasonable satisfaction of the Agency survey the levels of the foreshore within 200 metres of the specified works and submit a report upon those levels to the Agency.

(4) The survey required under sub-paragraph (3) above shall be undertaken at points corresponding to the intersection of grid lines spaced at 10 metre intervals parallel to the river walls and at 50 metre intervals at right angles to the River Thames.

(5) If during the construction of the specified works, any defects in the river walls deteriorate or scouring or siltation of the foreshore exceeds an average of 150 millimetres from the initial measurements taken on any two adjacent grid lines 50 metres apart, the undertaker shall immediately cease the construction of the authorised works and not re-commence the construction otherwise than in accordance with such reasonable requirements as may be specified by the Agency which may include changes to working methods and the completion of mitigation works.

4.—(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 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 settled in accordance with paragraph 13 below and, where applicable, in accordance with any requirements specified under paragraph 3(5) above.

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

- (a) shall not be unreasonably withheld;
- (b) shall be deemed to have been given if it is neither given nor refused within 2 months of the submission of plans for approval in writing and, in the case of a refusal, accompanied by a statement of the grounds of refusal.
- (c) may be given subject to such reasonable requirements as the Agency may impose for the protection of any drainage work or the fishery or water resources, for the prevention of flooding or water pollution and in the discharge of its environmental and recreational duties.

5. Without prejudice to the generality of paragraph 4 above, the requirements which the Agency may impose under that paragraph include conditions requiring the undertaker at its own expense 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.

6.—(1) Any specified work, and all protective works required by the Agency under paragraph 4 above, shall be constructed 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.

(a) 1991 c.59.

(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 Schedule, the Agency may by notice in writing require the undertaker, at the undertaker's own expense, to comply with the requirements 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 and within such limits as the Agency reasonably requires.

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

(5) In the event of any dispute as to whether sub-paragraph (3) above is applicable to any work in respect of which a 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 an emergency exercise the powers conferred by sub-paragraph (4) above until the dispute has been determined.

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

(2) If any such work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the Agency, 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 any sea defences) to its former condition, to such extent and within such limits as the Agency reasonably requires.

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

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

8. 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, the Agency may make good the same and recover from the undertaker the expense reasonably incurred by it in so doing.

9.—(1) Without prejudice to the other provisions of this Schedule, the undertaker shall take all such measures as may be reasonably practicable to prevent any interruption in the passage of fish 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 the fishery, the undertaker fails to take such steps as are described in sub-paragraph (2) above, 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 a notice specifying those steps is served on the undertaker as soon as is reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

10. The undertaker shall indemnify the Agency in respect of all costs, charges and expenses which the Agency may reasonably incur or have to pay or which it may incur—

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

11.—(1) Without prejudice to the other provisions 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 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 groundwater, which is caused by the construction of any of the works or any act or omission of the undertaker, its contractors, agents, or employees whilst engaged upon any such work.

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

12. The fact that any work or thing has been executed or done 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 by an arbitrator, shall not relieve the undertaker from any liability under the provisions of this Schedule.

13.—(1) Unless the parties agree to arbitration under article 36 above, any difference arising between the undertaker and the Agency under paragraph 4 above shall be settled by the Minister of Agriculture, Fisheries and Food and the Secretary of State acting jointly on a reference to them by the undertaker or the Agency after notice by one to the other.

(2) Where a reference is made under sub-paragraph (1) above, the undertaker and the Agency shall pay such of the reasonable costs of the Minister of Agriculture, Fisheries and Food and the Secretary of State incurred in the determination of that reference as the Minister of Agriculture Fisheries and Food and the Secretary of State jointly shall direct.

(3) Subject to sub-paragraph (1) above, any difference arising between the undertaker and the Agency under this Schedule (other than a difference as to its meaning or construction) shall be resolved by an arbitrator under article 36 above.

SCHEDULE 10

Article 28(2)

PROTECTION OF CERTAIN PERSONS

PART I

PROTECTION OF RAILTRACK

1.—(1) The following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and Railtrack PLC, have effect.

(2) In this Part of this Schedule—

“construction” shall include execution, placing, alteration and reconstruction and “construct” and “constructed” shall be construed accordingly;

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

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

“Railtrack” means Railtrack PLC and any associated company of Railtrack PLC which holds property for railway purposes and for this purpose “associated company” means any company which is (within the meaning of section 763 of the Companies Act 1985(a)) the holding company of Railtrack PLC, a subsidiary of Railtrack PLC or another subsidiary of the holding company of Railtrack PLC;

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

“specified work” means so much of any of the authorised works as is situated upon, across, under or over or may in any way affect railway property and which has been notified as a specified work in accordance with paragraph 3(1) below; and

“Station” means Railtrack PLC’s Charing Cross Station in the City of Westminster.

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

(2) The undertaker shall not in exercise of the powers under article 3(3) above carry out any works outside the limits of deviation which affect railway property unless the carrying out of such works is with the consent of Railtrack PLC.

(3) Subject to sub-paragraph (4) below, the powers under article 5 above 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(b)), is under the control or management of, or is maintainable by, Railtrack, except with the consent of Railtrack PLC.

(4) Sub-paragraph (3) above shall not apply to the carrying out under this Order of emergency works, within the meaning of Part III of the 1991 Act.

(5) The undertaker shall not in the exercise of the powers conferred by or under this Order prevent pedestrian or vehicular access to the Station or any other railway property unless preventing such access is with the consent of Railtrack PLC.

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

(7) The undertaker shall not exercise the powers under article 14(1) or 15 above or the powers under section 11(3) of the 1965 Act, in respect of any railway property except with the consent of Railtrack PLC.

(8) Where Railtrack PLC is asked to give its consent pursuant to sub-paragraphs (2), (3), (6) or (7) above such consent shall not be unreasonably withheld or delayed but may be given subject to reasonable conditions.

3.—(1) The undertaker shall before commencing construction of any authorised work supply to Railtrack PLC proper and sufficient plans of that work and shall not commence construction of that work until—

- (a) the engineer has notified the undertaker in writing whether or not such work is a specified work; and
- (b) where the engineer notifies the undertaker that the work is a specified work, plans thereof have been approved in writing by the engineer (such approval not to be unreasonably withheld) or settled by mediation or arbitration in accordance with paragraph 15 below.

(2) The notification required by sub-paragraph (1)(a) above shall be given not more than 10 days after such plans have been supplied to Railtrack PLC.

(3) If by the end of the period of 28 days beginning with the date on which plans have been supplied to Railtrack PLC under sub-paragraph (1) above (or such shorter period as may be agreed between the undertaker and Railtrack PLC) 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.

(4) 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 by the

(a) 1985 c.6.

(b) 1980 c.66.

(c) 1990 c.8.

undertaker before commencement of the specified works to ensure the safety or stability of railway property, the continuation of safe and efficient operation of the railways of Railtrack PLC and the Station or the services of operators using the same (including any relocation of works, apparatus and equipment necessitated by the authorised works) and the comfort and safety of passengers or customers.

4. Specified works (and any protective works specified by the engineer pursuant to paragraph 3(4) above) 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 (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 reasonably practicable, and except to the extent permitted by any approval of plans under paragraph 3(1) above, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Railtrack PLC or the traffic thereon, the operation of the Station or the use by passengers of railway property;

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

5. The undertaker shall—

- (a) at all times afford reasonable facilities to the engineer for access to the specified works during their construction, and
- (b) supply the engineer with all such information as he may reasonably require with regard to the specified works or the method of construction thereof.

6.—(1) If any alterations or additions, either permanent or temporary, to railway property are reasonably necessary during the construction of the specified works or during a period of 12 months after the completion of those works in consequence of the construction of the specified works in order to ensure the safety of railway property or the continued safe and efficient operation of the railways of Railtrack PLC and Railtrack PLC gives to the undertaker reasonable notice of its intention to carry out such alterations or additions, the undertaker shall pay to Railtrack PLC the reasonable cost thereof 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 Railtrack 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 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 Railtrack PLC under this paragraph.

7. The undertaker shall repay to Railtrack PLC all reasonable fees, costs, charges and expenses reasonably incurred by Railtrack—

- (a) in respect of the employment of any inspectors, signalmen, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, watching, lighting and signalling railway property in order to prevent as far as is possible all interference, obstruction, danger or accident arising from works for the maintenance of or the failure of the authorised works,
- (b) resulting from any speed restrictions which may, in the opinion of the engineer, be required to be imposed as a result of the construction, maintenance or failure of the authorised works, or from the substitution, suspension or diversion of railway services which the engineer considers may be necessary for the same reason,
- (c) in respect of any additional temporary lighting of railway property in the vicinity of the authorised works, made reasonably necessary as a result of the authorised works or the failure of those works.

8.—(1) If at any time after the completion of the specified works Railtrack PLC gives notice to the undertaker informing it that the state of maintenance of the specified works 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 works in such state of maintenance as not adversely to affect the operation of railway property.

(2) If within—

(a) a period of 28 days after notice has been given to the undertaker under sub-paragraph (1) above, or

(b) in the case of an emergency, such shorter period as the occasion may require,

the undertaker does not commence, and continue with reasonable dispatch, the steps required to be taken in consequence of the notice, Railtrack may without further notice to the undertaker itself take those steps, including any steps which require Railtrack to enter or use property belonging to or under the control of the undertaker.

(3) The cost to Railtrack of implementing sub-paragraph (2) above shall be repaid to Railtrack PLC by the undertaker.

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

10. All temporary works and equipment erected or placed by the undertaker under the powers of this Order (other than in the course of the construction of the specified works) on, over or under any railway of Railtrack PLC shall, as soon as reasonably practicable, be removed by the undertaker at times to be agreed with, and to the reasonable satisfaction of, the engineer and in such a way as to cause as little damage to railway property, and as little interference with or delay or interruption to the traffic on the railways of Railtrack PLC, as is possible; and if any damage to railway property or such interference, delay or interruption is caused by any such failure to remove any such temporary works and equipment the undertaker shall forthwith make good such damage and pay to Railtrack the reasonable costs and expenses to which Railtrack may be put and reasonable compensation for any loss which Railtrack may sustain by reason of such damage, interference, delay or interruption.

11. The undertaker shall not provide any illumination or illuminated sign on or in connection with the specified works in the vicinity of any railway belonging to Railtrack PLC unless it shall first have consulted Railtrack PLC and it shall comply with Railtrack PLC'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.

12.—(1) The undertaker shall pay to Railtrack PLC a sum equivalent to 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 or suffered by Railtrack—

(a) by reason of the maintenance of the specified works 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 the maintenance of the specified works;

and the undertaker shall indemnify Railtrack from and against all loss and damage arising out of or in connection with the maintenance of the specified works or any such failure, act or omission and the fact that any act or thing may have been done by Railtrack 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 Railtrack 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) Railtrack PLC 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 prior consent of the undertaker.

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

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

(5) The obligation under sub-paragraph (3) above to pay Railtrack PLC 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) above.

(6) In the assessment of any sums payable under this paragraph 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 Railtrack PLC 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 paragraph or increasing the sums so payable.

(7) 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 restrictions of the use of Railtrack PLC’s railway network as a result of the construction or maintenance or failure of the authorised works or any such failure, act or omission as is mentioned in sub-paragraph (4) above.

13. The undertaker and Railtrack PLC 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 Railtrack PLC relating to any railway property.

14. Any provision of an agreement entered into under paragraph 13 above which provides for Railtrack PLC to require the transfer to the undertaker of the property referred to in that paragraph at any future date shall not be subject to the rule against perpetuities.

15. Any difference arising between the undertaker and Railtrack PLC under this Part of this Schedule (other than a difference as to the meaning or construction of this Part of this Schedule) shall be referred to and settled by mediation in accordance with procedures to be agreed between Railtrack PLC and the undertaker or, in default of agreement as to the procedures for mediation, shall be referred to and settled by arbitration in accordance with article 36 above.

PART II

PROTECTION OF THE PORT OF LONDON AUTHORITY

16. The provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and the Port of London Authority (“the Port Authority”), have effect for the protection of the Port Authority and the users of the river.

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

“construction” shall include execution, placing, altering, replacing, relaying and removal and, in its application to the tidal works which include or comprise any operation, means the carrying out of that operation and “construct” and “constructed” shall be construed accordingly;

“plans” shall include plans, sections, elevations, drawings, specifications and programmes and construction methods including where applicable, such relevant hydraulic information about the river as may be reasonably requested by the Port Authority;

“river” means the River Thames;

“tidal work” means so much of any temporary or permanent work authorised by this Order (which includes the demolition of the existing Hungerford footbridge, any removal of gravel or other material, any dredging or similar work, any geotechnical investigations that may be undertaken and safeguarding works) 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 and land which will or may, in the reasonable opinion of the Port Authority, have an effect on the access to and the use of Charing Cross Pier or by pedestrians passing between the Victoria Embankment and Charing Cross Pier.

Works in the River and adjacent to Charing Cross Pier

18.—(1) The undertaker shall not commence tidal works until it has supplied to the Port Authority such proper and sufficient plans for the same as the Port Authority shall reasonably require and those plans have been approved in writing by the Port Authority (such approval not to be unreasonably withheld).

(2) A tidal work shall not be placed or constructed on the bed of the river under the provision of this Order unless the tidal work—

- (a) has been previously approved by the Secretary of State; or
- (b) if such approval has not been previously obtained a condition has been imposed in any approval given by the Port Authority to plans under the provisions of sub-paragraph (1) above that that tidal work will be removed if the Secretary of State so requires.

(3) The Port Authority shall notify the undertaker within a period of 28 days starting with the

date on which such plans of tidal works have been furnished to the Port Authority, or such longer period as may be agreed in writing by the Port Authority and the undertaker, of its approval or disapproval of those plans.

(4) Any approval of the Port Authority required under this paragraph may be given subject to such reasonable conditions as the Port Authority may make for the protection of—

- (a) vessel movement on, or the flow or regime of, the river, or
- (b) the use of its land or the river for the purposes of performing its statutory functions, including any relocation, or provision, of works, new works, moorings, apparatus and equipment necessitated by the tidal works, or any other works authorised by the Order, or their construction or maintenance.

(5) If within a period of 28 days starting from the date on which it receives proper and sufficient plans of a tidal work under sub-paragraph (1) above the Port Authority does not notify the undertaker of its approval or disapproval of those plans, it shall be deemed to have disapproved of the said plans or such part of the plans as it has not approved.

(6) Where the undertaker is aggrieved by—

- (a) the disapproval of the Port Authority of any plans submitted under sub-paragraph (1) above,
- (b) any term or condition upon which the Port Authority propose to approve the plans, or
- (c) any modification by the Port Authority of the plans,

it may within 28 days from the date upon which the Port Authority is deemed to have notified its disapproval of the plans or the date upon which the Port Authority notifies the undertaker of its decision, as the case may be, appeal to the Secretary of State.

(7) If an appeal to the Secretary of State is made, the following provisions shall apply—

- (a) the appeal shall be made by written notice stating the grounds of the appeal,
- (b) the appellant shall send a copy of the notice of appeal to the Port Authority,
- (c) the Port Authority may make written representations to the Secretary of State within 14 days from receipt by it of the copy notice of appeal, and if it does so shall forthwith send a copy of its representations to the appellant,
- (d) the Secretary of State may confirm, vary or revoke a decision or requirement against which an appeal is made and may make any consequential amendments necessary, and
- (e) the Secretary of State may direct the Port Authority or the undertaker to give effect to the decision of the Secretary of State on the appeal and the Port Authority or the undertaker (as the case may be) shall forthwith comply with any direction given.

(8) Without prejudice to the requirements which may be imposed by the Port Authority on the approval of plans for tidal works—

- (a) no more than two spans of Charing Cross Railway Bridge and the approaches to those spans shall be blocked partially or wholly to navigation at any one time,
- (b) the two main navigation spans of Charing Cross Railway Bridge, being the second and third spans over the river from the Westminster shore, and the approaches to those spans, must not be blocked wholly, or partially, to navigation at the same time, and
- (c) save for the span nearest to the Lambeth shore, the tidal works must not affect the width and headroom of the present spans of Charing Cross Railway Bridge as extended by the tidal works nor the depth of water beneath the spans without the prior agreement of the Port Authority.

(9) The undertaker shall carry out all operations for the construction or maintenance of any tidal works with all reasonable despatch and to the reasonable satisfaction of the Port Authority so that vessel movement on, or the flow, or regime of the river and the exercise of the Port Authority's statutory functions shall not suffer more interference than is reasonably practicable and the Port Authority shall be entitled at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey such operations.

(10) If any tidal work is constructed otherwise than in accordance with the requirements of this part of this Schedule or with any condition in an approval pursuant to sub-paragraph (4) above, the Port Authority 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 that condition and if the undertaker does not do so or is unable to do so then the Port Authority may in writing require the undertaker to remove, alter or pull down the tidal work and where the tidal work is removed to restore the site of that work to its condition prior to the construction of the tidal work to such an extent and within such limits as the Port Authority think proper.

(11) The undertaker shall, upon completion of the construction or maintenance of any part of an

authorised work, remove as soon as is practicable any temporary tidal works and materials for such temporary tidal works carried out or placed only for the purposes of that part of the authorised work and any materials which formed part of the existing Hungerford footbridge which have been dismantled and have not been removed, and shall make good the site to the reasonable satisfaction of the Port Authority.

(12) The undertaker shall not—

- (a) deposit in or allow to fall or be washed into the river any gravel, soil or other material except to the extent permitted by any approval of a tidal work;
- (b) discharge or allow to escape either directly or indirectly into the river any offensive or injurious matter in suspension or otherwise; or
- (c) discharge into the river any water by any watercourse, public sewer or drain without the consent of the Port Authority and such consent may be given subject to such terms and conditions as the Port Authority may reasonably impose but shall not be unreasonably withheld.

(13) The undertaker shall (subject to sub-paragraph (14) below) remove from the river any pile, stump or other obstruction which becomes exposed in consequence of a tidal work.

(14) If it is not reasonably practicable to remove a pile, stump or other obstruction it shall be cut off at such level below the bed of the river as the Port Authority may direct.

(15) If the undertaker fails to remove or cut off (as the case may be) any pile, stump or other obstruction pursuant to sub-paragraphs (13) and (14) above within a period of 28 days beginning with the date of receipt of a written notice from the Port Authority requiring its removal or cutting off, the Port Authority may carry out the removal or cutting off and recover the cost of doing so from the undertaker.

(16) If a tidal work is abandoned or falls into decay, the Port Authority may by notice in writing require the undertaker either to repair or restore the tidal work, or any part of it, or to remove the tidal work and restore the site of that work to its condition prior to the construction of the tidal work, to such an extent and to such limits as the Port Authority think proper.

(17) If a work consisting partly of a tidal work and partly of works on or over land above the level of high water spring tides is abandoned or falls into decay and that part of the works on or over land above the level of high water springs is in such condition as to interfere or cause reasonable apprehension that it may interfere with the right of navigation on the river or other public rights over the foreshore, the Port Authority may include that part of the works or any portion thereof in any notice under sub-paragraph (16).

(18) If on the expiration of such reasonable period as may be specified in a notice under sub-paragraph (16) above the work specified therein has not been completed to the satisfaction of the Port Authority, the Port Authority may undertake that work and any expenditure reasonably incurred by them in so doing shall be recoverable from the undertaker.

(19) On completion of the construction of the tidal works, the undertaker shall supply to the Port Authority a plan on a scale of not less than 1 in 2500 and sections and elevations on the scale of not less than 1 in 100 showing to the Port Authority's reasonable satisfaction the situation and levels of the permanent tidal works at that time.

Facilities for Navigation

19.—(1) The undertaker shall mark and light the tidal works in accordance with such directions as the Port Authority shall give from time to time.

(2) The undertaker shall not in the exercise of the powers granted by this Order interfere with the marks, lights and other navigational systems on Charing Cross Railway Bridge without the agreement of the Port Authority and shall ensure access remains available to them during and following construction or maintenance of the tidal works.

(3) The undertaker shall provide at the tidal works, or shall afford reasonable facilities at such works (including an electricity supply), for the Port Authority to provide at the undertaker's cost, from time to time, such navigational lights, signals or other apparatus for the benefit, control and direction of navigation as the Port Authority may deem necessary by reason of the construction, or maintenance of the tidal works and shall ensure access remains available to them during and following construction or maintenance of the tidal works.

(4) Without prejudice to section 133 of the Port of London Act 1968 the undertaker shall comply with the directions of the Port Authority's harbourmaster from time to time with regard to the lighting on the pedestrian footways on the tidal works or the screening of such lighting to ensure that it is not a hazard to navigation on the river.

Survey of Riverbed

20.—(1) Before the construction of the tidal works is commenced the Port Authority in conjunction with the undertaker and at the undertaker's cost shall carry out a survey of such parts of the river as are in the vicinity of Charing Cross Railway Bridge and which might be affected by any siltation or scouring deriving from the tidal works for the purpose of establishing the condition of the river at that time.

(2) The Port Authority shall carry out such surveys of the river as are reasonably required during the construction of the tidal works to ascertain the effect of the tidal works, on the river and the Port Authority shall make available to the undertaker, at a reasonable charge, the results of any such survey.

(3) After completion of the tidal works, the Port Authority in conjunction with the undertaker and at the undertaker's cost shall carry out a further survey of the parts of the river which were surveyed prior to the construction of the tidal works and a survey of the completed tidal works for the purpose of establishing the condition of the river and the effect that the tidal works are having on navigation, the flow and the regime of the river and the exercise of the Port Authority's statutory functions.

(4) If any part of the river becomes subject to siltation or scouring and—

(a) such siltation or scouring is siltation or scouring which is wholly or partly caused by a tidal work during the period beginning with the commencement of the construction of that tidal work and ending with the expiration of 10 years after the date on which the tidal work is completed, and

(b) for the safety of navigation or in the interests of persons using the river or for the protection of works in the river, such siltation or scouring should in the reasonable opinion of the Port Authority be removed or made good,

the undertaker shall either arrange for the work to be undertaken itself or pay to the Port Authority any additional expense to which the Port Authority may reasonably be put in dredging the river to remove the siltation or in making good the scouring so far as (in either case) it is attributable to the tidal work.

General Protection

21.—(1) Save to the extent permitted by any approval of a tidal work the undertaker shall not under the powers of this Order without the consent of the Port Authority (not to be unreasonably withheld) acquire or use any part of the river bed or foreshore of the river or any other land of the Port Authority.

(2) If any or all of the footbridges and ancillary works constructed under, in or over the river under the powers of this Order cease to be highway and are permanently removed, there shall revert to the Port Authority, at no cost, any interest of the undertaker in the airspace and riverbed in or over the river previously occupied by such structures.

(3) Subject to paragraph 2 of Schedule 13 to this Order the exercise in, under or over the river by the undertaker of any of its functions under this Order shall be subject to any enactment relating to or made by the Port Authority including byelaws or directions of the Port Authority and the exercise by the Port Authority or its harbourmaster of any powers and functions conferred on it or him by or under any enactment.

(4) At all times during construction or maintenance of the authorised works the undertaker shall ensure the maintenance of reasonable access to Charing Cross Pier (which includes access from both existing access points from the Victoria Embankment) and the maintenance of such other reasonable access to the river as the Port Authority may require for the exercise of its statutory functions.

22.—(1) The undertaker shall be responsible for and make good to the Port Authority all costs, charges, damages and expenses which may reasonably be incurred by the Port Authority—

(a) by reason of the construction or maintenance of the authorised works or failure thereof, or

(b) by reason of any act or omission of the undertaker or of any persons in its employ or of its contractors or agents or others whilst engaged upon the construction or maintenance of the authorised works or dealing with any failure of such works,

and the undertaker shall indemnify the Port Authority from and against all claims and demands arising out of or in connection with the authorised works or any such failure, act or omission and the fact that any act or thing may have been done by the Port Authority on behalf of the undertaker or done by the undertaker, any person in its employ or its contractors or agents in accordance with plans or particulars submitted to or modifications or conditions specified by the Port Authority, or

in a manner approved by the Port Authority, or under its supervision or the supervision of its duly authorised representative shall not (if it was done or required without negligence on the part of the Port Authority or its duly authorised representative, or any person in its employ or its contractors or agents) excuse the undertaker from liability under the provisions of this indemnity.

(2) The Port Authority shall give the undertaker reasonable notice of any such claim or demand as is referred in sub-paragraph (1) above and no settlement or compromise thereof shall be made without the prior consent of the undertaker.

23. Any difference arising between the undertaker and the Port Authority under this Part of this Schedule (other than a difference as to the meaning or construction of this Part of this Schedule) shall be referred to and settled by arbitration in accordance with article 36 above.

PART III

PROTECTION OF BRITISH TELECOMMUNICATIONS PLC

24.—(1) The provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and British Telecommunications PLC, have effect for the protection of BT.

(2) In this Part of this Schedule—

“BT” means British Telecommunications PLC;

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

“telecommunications operator” means the operator of a telecommunications code system, and “operator”, “telecommunications apparatus”, “telecommunications code system” and “telecommunications system” have the same meanings as in Schedule 4 to the Telecommunications Act 1984(a).

25. The temporary stopping up or diversion of any street under article 7 above shall not affect any right of a telecommunications operator under paragraph 9 of the Telecommunications Code, contained in Schedule 2 to the Telecommunications Act 1984, in respect of any apparatus which at the time of the temporary stopping up or diversion is in that street.

26. If BT suffers damage in consequence of the construction, use or failure of the works or any subsidence resulting from the works, the undertaker shall pay the cost reasonably incurred by BT in making good such damage, and shall indemnify BT against claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by BT by reason or in consequence of any such damage, 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, its officers, servants, contractors or other agents; and

(b) BT 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.

27. Nothing in this Order shall affect any right of a telecommunications operator under Schedule 2 to the Telecommunications Act 1984.

PART IV

PROTECTION OF MISCELLANEOUS UNDERTAKINGS

28. The provisions of this Part of this Schedule shall have effect—

(a) in relation to each of the protected persons (save in the case of paragraph 30(4) below, which has effect only in relation to LRT);

(b) unless otherwise agreed in writing by the protected person and the undertaker.

29. In this Part of this Schedule—

“approval” in relation to specified works means approval of the engineer appointed by the

(a) 1984 c.12.

protected person whose protected property is affected by those works such approval not to be unreasonably withheld;

“construction” shall include reconstruction, altering, replacing, relaying, removal, maintenance and repair of the specified works;

“engineer” means the engineer appointed by the protected persons;

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

“protected person” means, severally, LRT, the Arts Council, or the South Bank Board;

“protected property” means in relation to each protected person any lands held or used by that protected person for the purposes of its operation, and any works, apparatus and equipment connected therewith for the maintenance or operation of which that protected person is responsible when the relevant specified works are begun; and

“the specified works” means so much of the authorised works as may be situated within 15 metres (measured in any direction) of, or may in any way affect, protected property and includes the construction of any such work.

30.—(1) The undertaker shall not under the powers conferred by or under this Order without the consent of the protected person, acquire or enter upon, take or use whether temporarily or permanently or acquire any new rights over protected property.

(2) This paragraph shall not prevent the undertaker acquiring the interest of any person other than the protected person in the lands mentioned in sub-paragraph (1) above, required for the purposes of the authorised works.

(3) The undertaker shall not in exercise of the powers of article 3(3) above carry out any works outside the limits of deviation which affect protected property except with the consent of the protected person, which consent shall not be unreasonably withheld but may be given subject to reasonable conditions.

(4) Subject to sub-paragraph (5) below, the powers under article 5 above 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, LRT, except with the consent of LRT.

(5) Sub-paragraph (4) above shall not apply to the carrying out under this Order of emergency works, within the meaning of Part III of the 1991 Act.

(6) The consent of the protected person under this sub-paragraph shall not be unreasonably withheld but may be given subject to reasonable conditions.

(7) The undertaker shall not in the exercise of the powers conferred by this Order, without the consent of the protected person, prevent or hinder pedestrian or vehicular access to any protected property.

(8) The provisions of Schedule 11 to this Order shall not apply to works, apparatus and equipment to which this Part of this Schedule applies.

(9) The undertaker shall not exercise the powers under article 14(3) or 15 above or the powers under section 11(3) of the 1965 Act, in respect of any protected property except with the consent of the protected person.

31.—(1) The undertaker shall, before commencing the specified works, furnish to the protected person such proper and sufficient plans specified of the specified works as may reasonably be required for the approval of the engineer and shall not commence the specified works until the plans have been approved in writing by the engineer or settled by arbitration.

(2) If, within a period of 56 days beginning with the date on which plans have been furnished to the protected person under sub-paragraph (1) above, the engineer has not notified his disapproval and the grounds of his disapproval, he shall be deemed to have approved the plans as submitted.

(3) If, within a period of 56 days beginning with the date on which plans have been furnished to the protected person under sub-paragraph (1) above, the protected person shall give notice to the undertaker that the protected person desires itself to construct any part of the specified works which in the opinion of the engineer will or may affect the stability of, or the safe operation of protected property, then, if the undertaker desires such part of the specified works to be constructed, the protected person shall construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with approved plans.

(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

(a) 1980 c.66.

commencement of the specified works to ensure the stability of protected property, the continuation of the safe and effective operation of the protected person's operation including any relocation of works, apparatus and equipment necessitated by the specified works and the comfort and safety of passengers or customers, and such protective works as may be reasonably necessary for those purposes shall be constructed 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.

32.—(1) The undertaker shall give to the engineer not less than 56 days' notice of its intention to commence the construction of any of the specified works and also, except in an emergency (when it shall give such notice as may be reasonably practicable), of its intention to carry out any works for the repair or maintenance of the specified works in so far as such works of repair or maintenance affect or interfere with protected property.

(2) The specified works shall, when commenced, be carried out with all reasonable dispatch in accordance with the plans approved or deemed to be approved or settled as aforesaid and under the supervision (if given), and to the reasonable satisfaction, of the engineer, and in such manner as to cause as little damage as may be to protected property and as little interference as may be with the conduct of protected person's operation and the use by passengers or customers of its property and, if any damage to protected property or any such interference is caused by the carrying out of the specified works, the undertaker shall, notwithstanding any such approval as aforesaid, make good such damage and shall pay on demand to the protected person all reasonable expenses to which the protected person may be put and compensation for any loss which the protected person may sustain by reason of any such damage or interference.

(3) Nothing in this paragraph shall impose any liability on the undertaker with respect to any damage, cost, expense or loss which is attributable to the act, neglect or default of a protected person or its servants or agents.

33. Without prejudice to the generality of paragraphs 31 and 32 above a protected person may, in approving the plans of or in supervising the carrying out of the specified works or of any protective works carried out by the undertaker by virtue of the provisions of paragraph 31(3) above, require that—

- (a) nothing shall be done by or on behalf of the undertaker which unreasonably impedes the free, uninterrupted and safe flow of passengers or customers;
- (b) dust sheets and other works and working methods are used so as to prevent so far as practicable any dust or dirt from the relevant works affecting such persons; and
- (c) adequate signing of all alterations of routes for such persons and of any hazards or obstructions to the free movement of such persons is provided.

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

35. During the construction of any part of the specified works under paragraph 31 above by a protected person under this Part of this Schedule, the protected person shall at all times afford reasonable facilities to the undertaker and its agents for access to those works, and shall supply the undertaker with such information as they may reasonably require with regard to such works or the method of construction thereof.

36.—(1) If any alterations or additions either permanent or temporary, to protected property are reasonably necessary during the construction of the specified works, or during a period of 12 months after the completion thereof, in consequence of the construction of the specified works, such alterations and additions may be carried out by the protected person after giving the undertaker reasonable notice of its intention to carry out such alterations or additions and the undertaker shall pay the protected person on demand the cost thereof as certified by the engineer, including in respect of permanent alterations and additions a capitalised sum representing any increase in the costs which may be expected to be reasonably incurred by the protected person in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If the cost of maintaining, working or renewing protected 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 the protected person under this paragraph.

37. The undertaker shall repay to any protected person all costs, charges and expenses reasonably incurred by the protected person—

- (a) in constructing any part of the specified works on behalf of the undertaker or any protective works under the provisions of paragraph 31 above, including, in respect of any permanent

- protective works, a capitalised sum representing the costs which may be expected to be reasonably incurred by the protected person in maintaining and renewing such works;
- (b) in respect of the employment of any inspectors, signalmen, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting its protected property in order to prevent, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works;
 - (c) resulting from any speed restrictions which in the opinion of the engineer are necessary by reason of the construction or failure of the specified works, or from the substitution or diversion of services which may be reasonably necessary for the same reason;
 - (d) in respect of any additional temporary lighting of its protected property in the vicinity of the specified works, being lighting made reasonably necessary by reason of the construction or failure of the specified works; and
 - (e) in respect of the consideration of plans and the supervision by the engineer of the construction of the specified works.

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

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

and the undertaker shall indemnify the protected person from and against all claims and demands arising out of or in connection with the construction of the specified works or any such failure, act or omission, and the fact that any act or thing may have been done in accordance with any requirement of the engineer or under his supervision, shall not (if it was not attributable to the act, neglect or default of the protected person, or of any person in their employ, or of their contractors or agents) excuse the undertaker from any liability under the provisions of this Part of this Schedule.

(2) The protected person shall give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the undertaker.

39. Any difference arising between the undertaker and a protected person under this Part of this Schedule (other than a difference as to the meaning or construction of this Part of this Schedule) shall be resolved by arbitration under article 36 above.

PART V

FURTHER PROTECTION OF LONDON REGIONAL TRANSPORT

40. The provisions of this Part of this Schedule shall take effect between LRT and the undertaker, unless otherwise agreed in writing between LRT and the undertaker.

41. In this Part of this Schedule—

“construction” shall include reconstruction, altering, replacing, relaying, removal, maintenance and repair of the specified works;

“engineer” means the engineer appointed by LRT;

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

“the pier” means Charing Cross Pier and any works, apparatus and equipment connected therewith; and

“the specified works” means so much of the authorised works as may be situated within 15 metres (measured in any direction) of, or may in any way affect, the pier and includes the construction, of any such work.

42.—(1) The undertaker shall not under the powers conferred by this Order without the consent of LRT, acquire or enter upon, take or use (whether temporarily or permanently) or acquire any new rights over the pier.

(2) This paragraph shall not prevent the undertaker acquiring any interest of any person other than LRT in the lands mentioned in sub-paragraph (1) above which is required for the purposes of the authorised works.

(3) The undertaker shall not in exercise of the powers of article 3(3) above carry out any works

outside the limits of deviation which affect the pier except with the consent of LRT, which consent shall not be unreasonably withheld but may be given subject to reasonable conditions.

(4) The undertaker shall not in the exercise of the powers of this Order, without the consent of LRT, prevent or hinder pedestrian or vehicular access to the pier.

(5) The provisions of Schedule 11 to this Order shall not apply to works, apparatus and equipment to which this Part of this Schedule applies.

(6) The undertaker shall not exercise the powers under article 14(3) above, or article 15 above or the powers under section 11(3) of the 1965 Act, in respect of the pier except with the consent of LRT, which consent shall not be unreasonably withheld but may be given subject to reasonable conditions.

43.—(1) The undertaker shall, before commencing the specified works, furnish to LRT such proper and sufficient plans thereof as may reasonably be required for the approval of the engineer and shall not commence the specified works until the plans have been approved in writing by the engineer or settled by arbitration.

(2) If, within a period of 56 days beginning with the date on which plans have been furnished to LRT under sub-paragraph (1) above, the engineer has not notified his disapproval thereof and the grounds of his disapproval, he shall be deemed to have approved the plans as submitted.

(3) If, within a period of 56 days beginning with the date on which plans have been furnished to LRT under sub-paragraph (1) above, LRT shall give notice to the undertaker that LRT desires itself to construct any part of the specified works which in the opinion of the engineer will or may affect the stability of, or the safe operation of the pier, then, if the undertaker desires such part of the specified works to be constructed, LRT shall construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with approved plans.

(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 the specified works to ensure the stability of the pier, the continuation of the safe and effective operation of the pier including any relocation of works, apparatus and equipment necessitated by the specified works and the comfort and safety of passengers or customers using the pier, and such protective works as may be reasonably necessary for those purposes shall be constructed 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.

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

(2) The specified works shall, when commenced, be carried out with all reasonable dispatch in accordance with the plans approved or deemed to be approved or settled as aforesaid and under the supervision (if given), and to the reasonable satisfaction, of the engineer, and in such manner as to cause as little damage as may be to the pier and as little interference as may be with the conduct of LRT's operation and the use by passengers or customers of the pier and, if any damage to the pier or any such interference is caused by the carrying out of the specified works, the undertaker shall, notwithstanding any such approval as aforesaid, make good such damage and shall pay on demand to LRT all reasonable expenses to which it may be put and compensation for any loss which they may sustain by reason of any such damage or interference.

(3) Nothing in this paragraph shall impose any liability on the undertaker with respect to any damage, cost, expense or loss which is attributable to the act, neglect or default of LRT or its servants or agents.

45. Without prejudice to the generality of paragraphs 43 and 44 above LRT may, in approving the plans of or in supervising the carrying out of the specified works or of any protective works carried out by the undertaker by virtue of the provisions of paragraph 43(3) above, impose reasonable conditions with a view to ensuring that—

- (a) nothing shall be done by or on behalf of the undertaker which unreasonably impedes the free, uninterrupted and safe flow of passengers or customers to or from the pier;
- (b) dust sheets and other works and working methods are used so as to prevent so far as practicable any dust or dirt from the relevant works affecting such persons; and
- (c) adequate signing of all alterations of routes for such persons and of any hazards or obstructions to the free movement of such persons is provided.

46. The undertaker shall at all times afford reasonable facilities to the engineer for access to the

specified works during their construction and shall supply him with all such information as he may reasonably require with regard to those specified works or the method of construction thereof.

47. During the construction of any part of the specified works under paragraph 43 above by LRT under this Part of this Schedule, LRT shall at all times afford reasonable facilities to the undertaker and its agents for access to those works, and shall supply the undertaker with such information as they may reasonably require with regard to such works or the method of construction thereof.

48.—(1) If any alterations or additions either permanent or temporary, to the pier are reasonably necessary during the construction of the specified works, or during a period of 12 months after the completion thereof, in consequence of the construction of the specified works, such alterations and additions may be carried out by LRT after giving the undertaker reasonable notice of its intention to carry out such alterations or additions and the undertaker shall pay LRT on demand the cost thereof as certified by the engineer, including in respect of permanent alterations and additions a capitalised sum representing any increase in the costs which may be expected to be reasonably incurred by LRT in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If the cost of maintaining, working or renewing the pier 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 LRT under this paragraph.

49. The undertaker shall repay to LRT all costs, charges and expenses reasonably incurred by LRT—

- (a) in constructing any part of the specified works on behalf of the undertaker or any protective works under the provisions of paragraph 43 above, including, in respect of any permanent protective works, a capitalised sum representing the costs which may be expected to be reasonably incurred by LRT in maintaining and renewing such works;
- (b) in respect of the employment of any inspectors, signalmen, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting its pier in order to prevent, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works;
- (c) resulting from any speed restrictions which may, in the opinion of the engineer, require to be imposed by reason of the construction or failure of the specified works, or from the substitution or diversion of services which may be reasonably necessary for the same reason;
- (d) in respect of any additional temporary lighting of its pier in the vicinity of the specified works, being lighting made reasonably necessary by reason of the construction or failure of the specified works; and
- (e) in respect of the consideration of plans and the supervision by the engineer of the construction of the specified works.

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

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

and the undertaker shall indemnify LRT from and against all claims and demands arising out of or in connection with the construction of the specified works or any such failure, act or omission as aforesaid, and the fact that any act or thing may have been done in accordance with any requirement of the engineer or under his supervision, shall not (if it was not attributable to the act, neglect or default of the LRT, or of any person in their employ, or of their contractors or agents) excuse the undertaker from any liability under the provisions of this Part of this Schedule.

(2) LRT shall give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the undertaker.

51. Any difference between the undertaker and LRT under this Part of this Schedule (other than a difference as to the meaning or construction of this Part of this Schedule) shall be referred to and settled by arbitration under article 36 above.

PROVISIONS RELATING TO STATUTORY UNDERTAKERS ETC.

Apparatus of statutory undertakers etc. on land acquired

1.—(1) Sections 271 to 274 of the 1990 Act (power to extinguish rights of statutory undertakers etc. and power of statutory undertakers etc. to remove or re-site apparatus) shall apply in relation to any land acquired or appropriated by 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 extinguishment of any rights under sections 271 and 272 and sections 279(2) to (4), 280 and 282, which provide for the payment of compensation) shall have effect accordingly.

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

(3) Where any apparatus of public utility undertakers or of a public telecommunications operator is removed in pursuance of a notice or order or made under section 271, 272 or 273 of the 1990 Act, as applied by sub-paragraph (1) above, 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) above 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 public sewer or with a private sewage disposal plant.

(5) The provisions of the 1990 Act mentioned in sub-paragraph (1) above, as applied by that sub-paragraph, shall not have effect in relation to apparatus as respects which paragraph 2 below or Part III of the 1991 Act applies.

(6) In this paragraph—

“the 1990 Act” means the Town and Country Planning Act 1990(a);

“public telecommunications operator” means—

- (a) a person authorised by a licence to which section 9 of the Telecommunications Act 1984(b) applies, to run a public telecommunications system; or
- (b) a person to whom the telecommunications code has been applied pursuant to section 10 of that Act; 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 6 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 6 of this Order any statutory utility whose apparatus is under, in, on, over, the street may and, if reasonably requested to do so 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.

(3) Subject to the following provisions of this paragraph, the undertaker shall pay to any statutory

(a) 1990 c.8.

(b) 1984 c.12.

(c) 1980 c.66.

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) above—

- (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 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) above shall be reduced by the amount of that excess.

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

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

(6) An amount which apart from this sub-paragraph would be payable to a statutory utility in respect of works by virtue of sub-paragraph (3) above (and having regard, where relevant, to sub-paragraph (4) above) 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 statutory utility any financial benefit by deferral of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) 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) above; and
- “statutory utility” means a statutory undertaker for the purposes of the Highways Act 1980 or a public telecommunications operator as defined in paragraph 1(6) above.

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), is under the control or management of, or is maintainable by, a navigation authority, except with the consent of the authority.

(2) Sub-paragraph (1) above 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) above may be made subject to such reasonable conditions as may be specified by the person giving it but shall not be unreasonably withheld.

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

REGULATION OF FOOTWAYS

1. This Schedule has effect for the regulation of such part of the authorised works as are open to the public.
2. In this Schedule–
“footway” means such part of the authorised works as are open to the public; and
“make”, in relation to any arrangements, includes alter and remove.
3. The undertaker may make arrangements for–
 - (a) the maintenance, cleansing and drainage of the footway;
 - (b) the lighting of the footway and of that part of any building or structure which is over or above it;
 - (c) the provision of personnel, cameras, alarms, railings or other devices (with the exception of gates or other barriers that could be used to obstruct the use of the footway) for the security of the footway;
 - (d) the provision and maintenance of support for the footway;
 - (e) the placing or retention of anything (including any structure) in, on or over the footway but not anything which projects sideways from (whether on the horizontal or otherwise), or protrudes below the bottom level of, the footway.
4. Except in the case of an emergency, not less than 2 months before making any arrangements under paragraph 3(e) above, the undertaker shall–
 - (a) display in a conspicuous position on or adjacent to the footway, or the affected part of the footway, a notice specifying the arrangements it proposes to make; and
 - (b) serve a notice on the Port Authority specifying those arrangements.
5. Where it is necessary for the undertaker to make any arrangements under paragraph 3(e) above in an emergency, the undertaker shall give such notice as is reasonably possible in the circumstances (if any) of its proposals to the Port Authority.
6. A notice displayed pursuant to paragraph 4(a) above shall specify–
 - (a) the place at which documents (including, where appropriate, plans or drawings) providing details of the arrangements may be inspected;
 - (b) the period during which representations relating to the arrangements the undertaker is proposing to make may be made to the undertaker; and
 - (c) the address to which any such representations are to be sent.
7. The period specified in a notice under paragraph 6(b) above shall be a period ending not less than 6 weeks after the date on which the notice displayed under paragraph 4(a) above is first displayed.
8. The undertaker shall use its best endeavours to ensure that every notice displayed pursuant to paragraph 4(a) above continues to be displayed in a legible form until the end of the period specified under paragraph 6(b) above.
9. Where any representations are made to the undertaker in relation to the arrangements it proposes to make within the period specified in a notice under paragraph 6(b) above, the undertaker shall take those representations into consideration before deciding whether to proceed to make the arrangements in question.

SCHEDULE 13

Article 31

APPLICATION OF LOCAL LEGISLATION

1. Section 27(2) of the Thames Embankment (North and South) Act 1868**(a)** (restrictions on building near Charing Cross Railway Bridge or Station) shall not apply to any works authorised by this Order.

2. The following provisions of the Port of London Act 1968**(b)**, namely:

(a) section 70 (works not to be constructed, etc. without works licence); and

(b) section 73(3) (licensing and dredging, etc.)

shall not apply to the authorised works.

SCHEDULE 14

Article 32

ENACTMENTS REPEALED AND CEASING TO HAVE EFFECT

PART I

1. For any period during which the undertaker is, pursuant to article 3(5) above, providing a temporary way on foot for members of the public across the River Thames in place of the existing Hungerford footbridge, sections 8, 16 and 30 of the Metropolis Toll Bridges Act 1877**(c)** so far as having effect in relation to the existing Hungerford footbridge shall be modified so as not to require the existing Hungerford footbridge or any road which passes over it to be maintained and kept in substantial repair suitable and open to the public during that period.

2. On the dedication as a highway of either Work No. 1 or Work No. 2 pursuant to article 10 above, sections 8, 16 and 30 of the Metropolis Toll Bridges Act 1877 so far as having effect in relation to the existing Hungerford footbridge, shall cease to have effect.

PART II

Chapter	Short title	Extent of repeal
1836 c.cxxxiii	Hungerford and Lambeth Suspension Bridge Act 1836	The whole Act, so far as not repealed
1843 c.xix	Hungerford and Lambeth Suspension Foot Bridge Act 1843	The whole Act
1845 c.lxii	Hungerford and Lambeth Suspension Foot Bridge Act 1845	The whole Act
1849 c.li	Charing Cross Bridge Approaches Act 1849	The whole Act
1859 c.lxxxix	Charing Cross Railway Act 1859	Section 46, so far as it relates to the existing Hungerford footbridge
1860 c.cxlvii	The Hungerford Market and Charing Cross Bridge Act 1860	The whole Act, so far as not repealed
1886 c.cxii (49 & 50 Vict.)	The Metropolitan Board of Works (Various Powers) Act 1886	Section 22
1900 c.cclvi	South Eastern and London, Chatham and Dover Railway Companies Act 1900	Section 18
1917 c.1	South Eastern and London, Chatham and Dover Railways Act 1917	Section 13

(a) 31 & 32 Vict. c.cxi.

(b) 1968 c.xxxii.

(c) 40 & 41 Vict. c.xcix.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises the interference with navigation that may be caused by the construction of the proposed Hungerford Footbridges across the River Thames.

The Order authorises the acquisition of the rights necessary for the demolition of the existing footbridge and for the construction of new footbridges. It also makes provision for the regulation and control of the use of the new footbridges for the protection of the public.

Plans and sections of the scheduled works and the book of reference may be inspected at Westminster City Hall, Westminster, 64 Victoria Street, London SW1E 6QP between the hours of 9am and 5pm, Mondays to Fridays excluding public holidays.

£6.30

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WO5669 11/99 570/2 4235 343329 100660