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STATUTORY INSTRUMENTS

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**2001 No. 1348**

**TRANSPORT AND WORKS, ENGLAND**

TRANSPORT, ENGLAND

The Leeds Supertram (Land Acquisition  
and Road Works) Order 2001

*Made* - - - - 28th January 2001

*Laid before Parliament* 14th February 2001

*Coming into force* - - 29th March 2001

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 (Application and Objections Procedure) Rules 1992(1) made under sections 6, 7 and 10 of the Transport and Works Act 1992(2) (“the 1992 Act”), for an Order under sections 1 and 5 of the 1992 Act;

And whereas the Secretary of State, has taken into consideration the objections made to that application and not withdrawn;

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 notice of the Secretary of State’s determination was published in the London Gazette on 28th December 2000;

And whereas the Order will not come into force until it has been laid before Parliament and has been brought into operation in accordance with the provisions of the Statutory Orders (Special Procedure) Acts 1945 and 1965(3);

Now, therefore, the Secretary of State, in exercise of the powers conferred on him by sections 1 and 5 of, and paragraphs 1 to 5, 7, 8, 10, 11, 13, 15 and 16 of Schedule 1 to, the 1992 Act and of all other powers enabling him in that behalf, hereby makes the following Order:—

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(1) S.I. 1992/2902.

(2) 1992 c. 42.

(3) 1945 c. 18 (9 & 10 Geo 6), of which section 3 was amended by section 12 of the Transport and Works Act 1992, and 1965 c. 43.

## PART I

### PRELIMINARY

#### Citation

1. This Order may be cited as the Leeds Supertram (Land Acquisition and Road Works) Order 2001.

#### Interpretation

- 2.—(1) In this order, unless the context otherwise requires—
  - “the 1965 Act” means the Compulsory Purchase Act 1965(4);
  - “the 1991 Act” means the New Roads and Streets Works Act 1991(5);
  - “the 1993 Act” means the Leeds Supertram Act 1993(6);
  - “the Applications Rules” means the Transport and Works (Applications and Objections Procedure) Rules 1992;
  - “authorised works” means the works authorised by the 1993 Act and the works authorised by this Order;
  - “the book of reference” means the book of reference described in rule 7(5) of the Applications Rules certified by the Secretary of State as the book of reference for the purposes of this Order;
  - “the City” means the City of Leeds;
  - “the Council” means Leeds City Council;
  - “the Executive” means the West Yorkshire Passenger Transport Executive;
  - “highway” and “highway authority” have the same meaning as in the Highways Act 1980(7);
  - “the land plans” means the plans described in rule 7(3) of the Applications Rules certified by the Secretary of State as the land plans for the purposes of this Order;
  - “the limits of deviation” means the limits of deviation for the road works shown on the works plans;
  - “the limits of land to be acquired” means the limits of land to be acquired shown on the land plans;
  - “maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace and “maintenance” shall be construed accordingly;
  - “the road works” means the works authorised by article 13(1) below;
  - “the sections” means the sections described in rule 7(2) of the Applications Rules certified by the Secretary of State as the sections for the purposes of this Order;
  - “street” means a street within the meaning of section 67(1) of the 1992 Act and includes part of a street;
  - “street authority”, in relation to a street, has the same meaning as in Part III of the 1991 Act;
  - “the tramway system” has the same meaning as in the 1993 Act (as extended by article 20(1) below);
  - “the tribunal” means the Lands Tribunal;

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(4) 1965 c. 56.  
(5) 1991 c. 22.  
(6) 1993 c. xv.  
(7) 1980 c. 66.

“the works plans” means the plans described in rule 7(1)(a) of the Applications Rules certified by the Secretary of State as the works plans for the purposes of this Order.

(2) Where the book of reference, the sections, the land plans or the works plans was or were revised before this Order was made, any reference to it or them in this Order is to the latest version as certified under article 22 below.

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

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

## PART II

### ACQUISITION OF LAND

#### **Power to acquire land**

**3.—**(1) Except in relation to the land described in paragraph (2) below, the Executive may acquire compulsorily—

- (a) so much of the land in the City shown on the land plans within the limits of land to be acquired and described in the book of reference as may be required for the authorised works; and
- (b) without prejudice to the generality of sub-paragraph (a) above, so much of the land in the City specified in columns (1) and (2) of Schedule 1 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 it may use any land so acquired for those purposes or for any other purposes connected with or ancillary to the tramway system.

(2) The Council may acquire compulsorily so much of the land in the City shown on the land plans numbered 70 and described and so numbered in the book of reference as they may require to make available to the Executive for the purpose of—

- (a) the construction of so much of Works Nos 9, 9A and 9B authorised by the 1993 Act as is to be situated on that land and any purpose connected with, or ancillary to, that purpose; and
- (b) the provision pursuant to that Act of an interchange terminus, car park and associated facilities.

(3) The provisions of this article shall have effect without prejudice to the powers of the Executive under sections 10(2) and 33 of the 1993 Act, and under any other provisions of that Act permitting land to be entered upon, taken or used without requiring the compulsory acquisition of that land.

(4) In this Part, “the acquiring authority” means the Council in the case of an acquisition pursuant to paragraph (2) above, and in any other case means the Executive.

#### **Application of Part I of the Compulsory Purchase Act 1965**

**4.—**(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<sup>(8)</sup> 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 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.

### **Application of the Compulsory Purchase (Vesting Declarations) Act 1981**

5.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981<sup>(9)</sup> 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 one or more local newspapers circulating in the locality of the authorised works”.

(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 inserted—

“(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) in subsection (1), after “publication” there shall be inserted “in the London Gazette and in one or more local newspapers circulating in the locality of the authorised works”.

(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 Compulsory Purchase Act 1965 shall be construed as references to that Act as applied to the acquisition of land under article 4 above.

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<sup>(8)</sup> 1981 c. 67.

<sup>(9)</sup> 1981 c. 66.

### **Powers to acquire new rights**

6.—(1) The Executive and the Council may compulsorily acquire such easements or other rights over any land referred to in paragraphs (1) and (2) of article 3 above as may be required for any purpose for which that land may be acquired by them under that article, 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 2 to this Order), where the acquiring authority acquires a right over land under paragraph (1) above it shall not be required to acquire a greater interest in the land.

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

### **Disregard of certain interests and improvements**

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

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

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

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

### **Acquisition of part of certain properties**

8.—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 4 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 were served, serve on the acquiring authority 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 acquiring authority agrees to take the land subject to the counter-notice, be referred to the tribunal.

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

- (a) without material detriment to the remainder of the land subject to the counter-notice, or

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

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

(6) If on such a reference the tribunal 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 acquiring authority is authorised to acquire compulsorily under this Order.

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

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

the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the acquiring authority 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 acquiring authority 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 it shall pay the owner compensation for any loss or expense occasioned to him by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or factory or of land consisting of a house with a park or garden, the acquiring authority 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.

### **Temporary use of land for construction of works**

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

- (a) enter upon and take temporary possession of the land in the City specified in column (1) of Schedule 3 to this Order for the purpose specified in relation to that land in column (2) of that Schedule relating to the authorised works specified in column (3) 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 land under this article the Executive shall serve notice of the intended entry on the owners and occupiers of the land.
- (3) The Executive 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 (3) of Schedule 3 to this Order.
- (4) Before giving up possession of land of which temporary possession has been taken under this article, the Executive shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the Executive shall not be required to replace a building removed under this article.
- (5) The Executive 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<sup>(10)</sup>.
- (7) Without prejudice to article 25 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 any land of which temporary possession may be taken under paragraph (1) above except that the Executive shall not be precluded from acquiring new rights over any part of that land under article 6 above.
- (9) Where the Executive takes possession of land under this article, it shall not be required to acquire the land or any interest in it.
- (10) In this article "building" includes any structure or other erection.

### **Extinction or suspension of private rights of way**

- 10.**—(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 acquiring authority, whether compulsorily or by agreement, or
- (b) on the entry on the land by the acquiring authority under section 11(1) of the 1965 Act, whichever is sooner.
- (2) All private rights of way over land of which the Executive takes temporary possession under this Order shall be suspended and unenforceable for as long as the Executive remains in lawful possession of the land.
- (3) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part I of the Land Compensation Act 1961.

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<sup>(10)</sup> 1961 c. 33.

(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<sup>(11)</sup> (extinguishment of rights of statutory undertakers etc.) applies.

#### **Time limit for exercise of powers of acquisition**

**11.**—(1) After the end of the period of 5 years beginning with the day on which this Order comes into force—

- (a) no notice to treat shall be served under Part I of the 1965 Act as applied to the acquisition of land by article 4 above;
- (b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981, as applied by article 5 above.

(2) The powers conferred by article 9 above shall cease at the end of the period referred to in paragraph (1) above, save that nothing in this paragraph shall prevent the Executive remaining in possession of land after the end of that period, if the land was entered and possession of it was taken before the end of that period.

#### **Acquisition: supplementary matters**

**12.**—(1) Parts II and III of Schedule 2 to the Acquisition of Land Act 1981 (exception of minerals from compulsory purchase and regulation of the working of mines or minerals underlying an authorised undertaking) shall have effect in relation to land to which article 3(1) or (2) above applies as if it were comprised in a compulsory purchase order providing for the incorporation with that order of those Parts of that Schedule.

(2) In their application by virtue of paragraph (1) above, Parts II and III of Schedule 2 to the Acquisition of Land Act 1981 shall have effect as if references to the undertaking were references to the undertaking which the Executive is authorised by this Order or the 1993 Act to carry on.

(3) Sections 31 and 32 of the 1993 Act shall apply to an acquisition under this Part as it applies to an acquisition under Part III of the 1993 Act.

(4) Sections 38(4) and 40(9) of the 1993 Act (trial holes) shall apply to the exercise of powers under section 11(3) of the 1965 Act as applied by article 4 above.

(5) Section 39(2) of the 1993 Act (so far as continued in effect by article 23(3) and (4) below) and section 41(2) and (3) of that Act shall apply to an acquisition under this Part as it applies to an acquisition under Part III of the 1993 Act; and section 41(4) shall have effect as if the reference to land acquired, held or used under the 1993 Act included reference to land acquired, held or used under this Order.

## **PART III**

### **MATTERS CONCERNING WORKS**

#### **Further works**

**13.**—(1) The Executive may, in the lines and situations shown on the works plans and in accordance with the levels shown on the sections, construct and maintain the following works—

*Work No. 1:* a road for the realignment of Chadwick Street in the City, commencing in Chadwick Street at a point 20 metres east of its junction with Black Bull Street and terminating at a point 121 metres south-east of its commencement; and

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(11) 1990 c. 8.



*Work No. 2:* a road for the realignment of Waterloo Street in the City, commencing in Waterloo Street at a point 20 metres east of its junction with Hunslet Road and terminating at a point 109 metres east of its commencement.

- (2) In constructing and maintaining the road works, the Executive may—
- (a) deviate laterally from the line and situation shown on the works plans within the limits of deviation for that work shown on the works plans;
  - (b) deviate vertically from the levels shown on the sections to any extent not exceeding 3 metres upwards or downwards.

(3) The Executive may carry out and maintain such of the following works as may be necessary or expedient for the purposes of, in connection with or in consequence of, the construction of the road works, namely—

- (a) works for the alteration or demolition of any building or structure,
- (b) works to alter the position of apparatus or street furniture, including mains, sewers, drains and cables,
- (c) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the road works, and
- (d) works for the benefit or protection of premises affected by the road works,

together with such other works (of whatever nature) as may be necessary or expedient as aforementioned.

(4) Works carried out under paragraph (3) above shall be carried out within the limits of land to be acquired.

**Further works: supplementary provision**

14.—(1) The Executive may permanently stop up all or any of Chadwick Street as existing between points W and X shown on the works plans upon the practical completion of Work No. 1 authorised by article 13(1) above to the reasonable satisfaction of the street authority and its opening for use.

(2) The Executive may permanently stop up all or any of Waterloo Street as existing between points Y and Z shown on the works plans upon the practical completion of Work No. 2 authorised by article 13(1) above to the reasonable satisfaction of the street authority and its opening for use.

(3) For the purposes of the construction of the road works, the Executive may temporarily stop up or alter Waterloo Street, Chadwick Street, Chadwick Street South and Black Bull Street in the City and for any reasonable time—

- (a) divert traffic from any of those streets, and
- (b) subject to paragraphs (4) and (5) below, prevent all persons from passing along those streets.

(4) The Executive shall provide reasonable access for pedestrians going to or from premises abutting on a street affected by the exercise of the powers conferred by paragraph (3) above if there would otherwise be no such access.

(5) The Executive shall not exercise the powers of paragraph (3) above without the consent of the street authority, such consent not to be unreasonably withheld.

(6) When Work No. 1 or Work No. 2 authorised by article 13(1) above is completed to the reasonable satisfaction of the street authority, unless otherwise agreed the realigned part of the street shall be maintained by and at the expense of the Executive 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.

(7) Nothing in paragraph (6) above shall prejudice the operation of section 87 of the 1991 Act (prospectively maintainable highways); and the Executive 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.

(8) Nothing in paragraph (6) above shall have effect in relation to street works as respects which the provisions of Part III of the 1991 Act apply.

(9) The street authority and the Executive may enter into agreements with respect to the exercise of the powers conferred by article 13 above and this article, and without prejudice to the generality of this paragraph, such an agreement may provide for the street authority to carry out any function under this Part which relates to the street in question, and contain such terms as to payment and otherwise as the parties consider appropriate.

### **Designation of tramways**

**15.**—(1) Work No. 2 authorised by the 1993 Act may be constructed within the limits of deviation relating to it provided for in the deposited plans for that Act and at the levels permitted by that Act so that any part of it is situated within the carriageway of Chadwick Street or Chadwick Street South in the City.

(2) Work No. 7 authorised by the 1993 Act may be constructed within the limits of deviation relating to it provided for in the deposited plans for that Act and at the levels permitted by that Act so that any part of it between its commencement and chainage 360 metres is situated within the carriageway of Thorpe Lane in the City.

(3) So far as any part of Work No. 2 or Work No. 7 authorised by the 1993 Act is constructed as mentioned in paragraph (1) or (2) above, it shall be treated for the purposes of the 1993 Act as if authorised and designated by that Act as tramway.

(4) If any part of the railways designated as tramway in the 1993 Act is constructed within the limits provided for it in the deposited plans for that Act and at the levels permitted by that Act so that it is not situated in the carriageway or a reserved area between dual carriageways, except in relation to sections 7(7), 16 and 68 of that Act it shall be treated for the purposes of the 1993 Act as if it had not been so designated as tramway; and if part of Work No. 7 authorised by that Act at or about chainage 1240 metres is so constructed, Thorpe Lane shall be treated as if it were specified in Schedule 2 to the 1993 Act.

(5) In paragraphs (1) and (2) above, references to Chadwick Street include reference to that street as it may be realigned under article 13(1) above or pursuant to Work No. 2B authorised by the 1993 Act, and references to Thorpe Lane include reference to that street as it may be realigned pursuant to Work No. 7A authorised by that Act.

(6) In paragraphs (1), (2) and (4) above, “carriageway” includes any part of the carriageway in respect of which works have been carried out under section 7(4) of the 1993 Act.

### **Stopping up of means of access**

**16.**—(1) The Executive may stop up and discontinue the private means of vehicular access to the premises known as 170 Briggate in the City at point A shown on the land plans, and carry out any incidental operations in the highway for the purpose.

(2) Any person who suffers loss by the stopping up authorised by paragraph (1) above shall be entitled to compensation to be determined, in case of dispute, under Part I of the Land Compensation Act 1961.

### **Further level crossings in consequence of changes of road layout**

17. Where the railways authorised by the 1993 Act cross the highways specified in Schedule 4 to this Order, those highways shall be treated for the purposes of that Act as if they were specified in Schedule 2 to the 1993 Act.

### **Discharge of water**

18.—(1) The Executive may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction or maintenance of the works authorised by article 13 above and for that purpose may within the limits of land to be acquired lay down, take up and alter pipes and may, on any land within those limits, make openings into, and connections with, the watercourse, sewer or drain.

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

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

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

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

(6) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991(12).

(7) 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**

19.—(1) Subject to the following provisions of this article the Executive may at its own expense and from time to time carry out such safeguarding works to any building which is within the limits of land to be acquired and which lies within 30 metres of any of the works authorised by article 13 above (“relevant works”), as the Executive 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 relevant works, or
- (b) after the completion of the construction of that part of the relevant works, at any time up to the end of the period of 5 years beginning with the day on which that part of the relevant works is first opened for use.

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(12) 1991 c. 57.

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

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

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

(5) Before exercising—

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

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

(6) Where notice is served under paragraph (5)(a), (c) or (d) above, the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice is 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 28 below.

(7) The Executive 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 relevant 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 Executive shall compensate the owners and occupiers of the building for any damage sustained by them.

(9) Without prejudice to article 25 below, nothing in this article shall relieve the Executive from any liability to pay compensation under section 10(2) of the 1965 Act.

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

(11) In this article—

- (a) “building” includes any structure or erection or any part of a building, structure or erection,
- (b) any reference to a building within a specified distance of a work includes—
  - (i) in the case of a work under the surface of the ground, a reference to any building within the specified distance of the point on the surface below which the work is situated, and
  - (ii) where a work has not commenced, a reference to a building within the specified distance of the proposed site of the work, and

- (c) “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 relevant 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 relevant works.

### **Leeds Supertram Act 1993**

**20.**—(1) References to the tramway system in the 1993 Act shall be treated, so far as relevant, as including references to the works authorised by article 13 above.

(2) The works and matters authorised by articles 13, 14 and 19 above shall be treated as authorised by the 1993 Act for the purposes of sections 38 to 42 and 61 of that Act.

### **Application of New Roads and Street Works Act 1991**

**21.**—(1) The road works shall be treated as major highway works for the purposes of Part III of the 1991 Act.

(2) In Part III of the 1991 Act, references, in relation to major highway works, to the highway authority concerned shall, in relation to works which are major highway works by virtue of paragraph (1) above, be construed as references to the Executive; provided that nothing in this paragraph shall affect the operation of section 39 of the 1993 Act as applied by article 20(2) above.

(3) The provisions of the 1991 Act mentioned in paragraph (4) 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 Executive under the powers conferred by this Part 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 Executive.

- (4) The provisions of the 1991 Act referred to in paragraph (3) 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 regulations),
  - 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.

(5) Sections 54 and 55 of the 1991 Act as applied by paragraph (3) above shall have effect as if reference in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

## PART IV

### MISCELLANEOUS AND GENERAL

#### **Certification of plans etc.**

22. The Executive shall, as soon as practicable after the making of this Order, submit copies of the book of reference, the sections, the land plans and the works plans to the Secretary of State for certification that they are, respectively, the book of reference, sections, land plans and works 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.

#### **For protection of Railtrack**

23.—(1) Schedule 5 to this Order (which includes provisions for the protection of Railtrack) shall have effect.

(2) Section 39 of the 1993 Act, which contains protective provisions for the protection of Railtrack shall cease to have effect with respect to the authorised works or the compulsory acquisition of land for those works.

(3) Subject to paragraph (4) below, nothing in paragraph (2) above shall affect section 39 of the 1993 Act in its application to any land, property or interest of the British Railways Board.

(4) Paragraph (2) of section 39 of the 1993 Act, as continued in effect by paragraph (3) above, shall not apply to the land specified in clause 10(5)(b) of the agreement referred to in paragraph 1(1) (c) of Schedule 6 to this Order.

#### **Agreements and undertakings connected with 1993 Act**

24. Schedule 6 to this Order (which relates to certain agreements and undertakings connected with the 1993 Act) shall have effect.

#### **No double recovery**

25. 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.

#### **Withholding of consent**

26. Where it is provided in this Order that any consent or approval is not to be unreasonably withheld, any dispute as to whether it is so unreasonably withheld or as to the conditions subject to which it is given shall be determined by arbitration.

#### **Service of notices**

27.—(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 as it applies for the purposes of this article, the proper address of any person in relation to the service on him of a notice or document under paragraph (1) above is, if he has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
  - (b) in any other case, his last known address at the time of service.
- (4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having an interest in, or as the occupier of, land and his name or address cannot be ascertained after reasonable inquiry, 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.

### **Arbitration**

**28.** Where under this Order any difference (other than a difference to which the provisions of the 1965 Act apply) is to be determined by or referred to arbitration, then, unless otherwise provided, the difference 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.

28th January 2001

*John Prescott*  
Secretary of State for the Environment,  
Transport and the Regions

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## SCHEDULES

### SCHEDULE 1

Article 3(1)(b)

#### ADDITIONAL LANDS WHICH MAY BE ACQUIRED

<i>(1)</i> <i>Number of land shown on land plans</i>	<i>(2)</i> <i>Location</i>	<i>(3)</i> <i>Purpose</i>
1	Meadow Lane	Site for sub-station
19	Footbridge crossing South Accommodation Road and Hunslet Road, including ramps	Removal of footbridge
27	Belle Isle Road south of M1 motorway	Site for sub-station
39	Thorpe Lane west of Thorpe Garth	Site for sub-station
48	Disused railway line north-west of Thorpe Lane	Proposed access to garden centre

### SCHEDULE 2

Article 6(3)

#### 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(**13**) shall have effect subject to the modifications set out in sub-paragraphs (2) and (3) below.

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

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

(13) 1973 c. 26.



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

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

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

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

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the Leeds Supertram (Land Acquisition and Road Works) Order 2001 (“the Order”) shall, in relation to that person cease to authorise the purchase of the right and be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice shall be deemed to have been served in respect of that interest on such date as the tribunal directs.

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

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest of 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 like circumstances and subject to the like conditions, to enter for the purpose of exercising that right (which shall be deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act shall be modified correspondingly.

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

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

### SCHEDULE 3

Article 9

#### LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Number of land shown on land plans</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(3)</i> <i>Authorised work</i>
16	Working space and access for construction purposes.	Work No. 2 authorised by the 1993 Act.
18	Working space and access for construction purposes.	Work No. 2 authorised by the 1993 Act.

### SCHEDULE 4

Article 17

#### LEVEL CROSSINGS

Further highways in the City to be crossed on the level—

Bowman Lane (as realigned pursuant to Work No. 2A authorised by the 1993 Act) Armouries Drive.

Central Reserve Crossing of Ring Road Middleton between Hopewell View and Lingwell Avenue.

Central Reserve Crossing of Middleton Park Road west of Lingwell Road.

Proposed new footpath at Thorpe Lane 225 metres west of Thorpe Garth.

Proposed new footpath at Thorpe Lane 95 metres west of footpath No. 69.

### SCHEDULE 5

Article 23

#### FOR PROTECTION OF RAILTRACK

1. The following provisions of this Schedule shall, unless otherwise agreed in writing between the Executive and Railtrack, have effect.

2. In this Schedule—

“construction” includes placing, alteration and renewal;

“the engineer” means an engineer to be appointed by Railtrack;

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

“protective works” means any such works as are mentioned in paragraph 8(a) below;

“Railtrack” means Railtrack PLC and any associated company of Railtrack PLC which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 736 of the Companies Act 1985(14)) the holding company of Railtrack PLC, a subsidiary of Railtrack PLC or another subsidiary of the holding company of Railtrack PLC;

(14) 1985 c. 6.

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“railway property” means any railway of Railtrack and any works connected therewith for the maintenance or operation of which Railtrack are responsible, and includes any lands held or used by Railtrack for the purposes of such railway or works;

“the specified works” means so much of the authorised works as may be situated upon, across, under or over or within 15 metres of, or may in any way affect, railway property.

**3.** The Executive shall not under the powers of this Order acquire compulsorily any relevant railway property, save that subject to paragraph 5 below they may acquire such easements or other rights in or over any relevant railway property which is shown on the land plans as they may reasonably require for the purposes of the specified works; and for this purpose “relevant railway property” means any railway property acquired by Railtrack before 10th June 1998 which is not specified in clause 10(5)(b) of the agreement referred to in paragraph 1(1)(c) of Schedule 6.

**4.** Article 5 of this Order shall not apply in relation to the acquisition of, or the acquisition of any easement or other right in or over, any railway property.

**5.** The Executive shall not under the powers of this Order, without the consent of Railtrack, enter upon or use (whether temporarily or permanently) or acquire any new easement or right pursuant to paragraph 3 above in—

- (a) so much of the land in the City shown numbered 60 on the land plans as lies east of Wakefield Road;
- (b) so much of the land in the City shown numbered 65 on the land plans as lies adjacent to Valley Farm Road on its north-western side; and
- (c) the land in the City shown numbered 67 on the land plans.

**6.—(1)** The Executive shall, before commencing the construction of the specified works, supply to Railtrack proper and sufficient plans thereof for the approval of the engineer and shall not commence the specified works until plans thereof have been approved in writing by the engineer or settled by arbitration.

(2) Approval of plans supplied under this paragraph shall not be unreasonably withheld and, if within 56 days after such plans have been supplied to Railtrack the engineer shall not have notified his disapproval thereof and the grounds of his disapproval, he shall be deemed to have approved the plans as supplied.

**7.—(1)** If, within 56 days after such plans have been supplied to Railtrack, Railtrack give notice to the Executive that Railtrack desire themselves to construct any part of the specified works which, in the opinion of the engineer, will or may affect the stability of railway property or the safe operation of traffic on the railways of Railtrack, then, if the Executive desire such part of the specified works to be constructed, Railtrack shall construct it with all reasonable dispatch on behalf of, and to the reasonable satisfaction of, the Executive in accordance with the plans approved or deemed to be approved or settled as aforesaid.

(2) Sub-paragraph (1) shall not apply where the only reason why the specified works (or the part of the specified works in question) may affect railway property is that the works or the operation of the works may cause interference with electrical or electronic apparatus or equipment forming part, or used in connection with, railway property.

**8.** The engineer may approve the plans subject to—

- (a) such reasonable conditions that—
  - (i) before the construction of the specified works; or
  - (ii) before the operation of the specified works (including any operation of the specified works for testing purposes); or

- (iii) in conjunction with the construction of the specified works, there shall be carried out temporary or permanent protective works specified in the conditions, being works not comprising alterations or additions to railway property falling within paragraph 15 below and which are reasonably required for the safe or convenient operation of Railtrack's railway undertaking;
- (b) where such protective works are specified, reasonable conditions that the protective works (so far as not intended to form part of the Executive's railway) be carried out by Railtrack; and
- (c) reasonable conditions as to the timing of the bringing into operation of the specified works so far as related to the carrying out of alterations and additions under paragraph 15 below.

**9.** Unless within 56 days after receipt by the Executive of approval of plans subject to any such conditions, the Executive gives notice in writing that the conditions or any of them are not reasonable (in which case the matter shall be referred to arbitration in accordance with paragraph 21 below), any protective works specified in the conditions shall be carried out in accordance with those conditions.

**10.** Where a matter is referred to arbitration as mentioned in paragraph 9 above and the arbitrator determines that the approval of the plans of the specified works shall be subject to conditions relating to the carrying out of protective works specified in the conditions, the protective works so specified shall be carried out in accordance with those conditions.

**11.** The Executive shall give to Railtrack not more than six months' and not less than 28 days' notice in writing of their intention to commence the construction of any of the specified works and, except in case of emergency (when they shall give such notice as may be reasonably practicable), of their 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 railway property.

**12.—(1)** The construction of the specified works shall, when commenced, be carried out—

- (a) with all reasonable dispatch in accordance with the plans approved, or deemed to be approved or settled as aforesaid and in accordance with any conditions under paragraphs 8 or 10 above subject to which such approval has been given, whether imposed by Railtrack or by an arbitrator;
- (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 may be to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe user of any railway of Railtrack or the traffic thereon and the use by passengers of railway property;

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

(2) Nothing in sub-paragraph (1) shall impose any liability on the Executive with respect to any damage, cost, expense or loss which is attributable to the neglect or default of Railtrack or their servants or agents.

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

**14.** Railtrack shall at all times afford reasonable facilities to the Executive and their agents for access to any works carried out by Railtrack under this Schedule during their construction, and shall

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supply the Executive with such information as they may reasonably require with regard to such works or the method of construction thereof.

**15.—**(1) If any alterations or additions, whether permanent or temporary, to railway property shall be shown upon approval of plans under paragraph 8 above to be reasonably necessary or become reasonably necessary during the construction of the specified works or during a period of 12 months after the completion thereof for the safe or convenient operation of Railtrack's railway network in consequence of the construction or operation of the specified works, and Railtrack give to the Executive reasonable notice of their intention specifying the alterations or additions to be carried out, the Executive shall pay to Railtrack the reasonable cost thereof including, in respect of any permanent alterations and additions, a capitalised sum representing the increase in 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) 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 Executive to Railtrack under this Schedule.

**16.** The Executive shall repay to Railtrack all costs, charges and expenses reasonably incurred by Railtrack—

- (a) in constructing any part of the specified works on behalf of the Executive as provided by paragraph 7 above or in constructing any protective works pursuant to conditions imposed under paragraph 8 or 10 above including, in respect of any permanent protective works, a capitalised sum representing the costs which may be expected to be reasonably incurred by Railtrack in maintaining and renewing such works;
- (b) in respect of the employment of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing interference, obstruction, danger or accident arising from the construction, maintenance, repair or failure of the specified works;
- (c) in respect of any special traffic working resulting from any speed restrictions which are necessary as a result of the construction, repair or failure of the specified works or from the substitution, suspension or diversion of services which may be necessary for the same reason;
- (d) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary as a result of the specified works or the failure thereof;
- (e) in respect of the approval by the engineer of plans submitted by the Executive and the supervision by him of the construction of the specified works.

**17.** If at any time after the completion of the specified works Railtrack shall give notice to the Executive that the state of repair of the specified works prejudicially affects railway property, the Executive shall take such steps as may be reasonably necessary to avoid the prejudicial effect on railway property.

**18.** Before providing any illumination or illuminated traffic sign on or in connection with the specified works in the vicinity of any railway of Railtrack, the Executive shall consult Railtrack and comply, subject to the approval of the Secretary of State, with Railtrack's reasonable requirements in regard thereto with a view to ensuring that such illumination or illuminated sign will not be confused with any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

**19.—**(1) The Executive shall be responsible for, and make good to Railtrack, all costs, charges, damages and expenses not otherwise provided for in this Schedule which may be occasioned to or reasonably incurred by, Railtrack—

- (a) by reason of the construction, maintenance or repair of the specified works or the failure thereof; or
- (b) by reason of any act or omission of the Executive, or of any person in their employ, or of their contractors or others whilst engaged upon the construction or repair of the specified works;

and the Executive shall indemnify Railtrack from and against all claims and demands arising out of or in connection with the construction, maintenance or repair 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 by Railtrack on behalf of the Executive under the provisions of this Order, 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 not attributable to the neglect or default of Railtrack or of any person in their employ, or of their contractors or agents) excuse the Executive from any liability under the provisions of this Schedule.

(2) Railtrack shall give to the Executive reasonable notice of any claim or demand mentioned in sub-paragraph (1) and no settlement or compromise thereof shall be made without the prior consent of the Executive.

**20.—**(1) The sum payable under paragraph 19 above shall include an amount equivalent to the relevant costs.

(2) Subject to the terms of any agreement between Railtrack and a relevant train operator regarding the terms of payment of the relevant costs of that train operator, Railtrack shall promptly pay to each relevant train operator the amount of any compensation which Railtrack receives by virtue of this paragraph which relates to the relevant costs of that train operator.

(3) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each relevant train operator as a consequence of any restriction in the use of Railtrack’s railway network as a result of the construction, maintenance, repair or failure of the specified works or any such failure, act or omission as is mentioned in paragraph 19 above; and

“relevant train operator” means any person who is authorised by a licence under section 8 of the Railways Act 1993 to act as the operator of a train on any part of a railway network in which the specified works are situated.

(4) The obligation under this paragraph to pay Railtrack the relevant costs shall in the event of default be enforceable directly by the relevant train operator concerned.

**21.** Any difference arising between the Executive and Railtrack under this Schedule (other than a difference as to its meaning or construction) shall be referred to and settled by arbitration.

## SCHEDULE 6

Article 24

### AGREEMENTS AND UNDERTAKINGS CONNECTED WITH THE 1993 ACT

#### *General*

1.—(1) Subject to the provisions of this Schedule, the following undertakings or agreements entered into in connection with the Bill for the 1993 Act shall so far as relevant and the circumstances permit apply to the powers conferred by this Order as they apply to the powers conferred by that Act—

- (a) the undertaking dated 9th July 1992 entered into between the Executive and the Post Office;
- (b) the agreement dated 19th February 1993 entered into between the Executive, the Council and Yorkshire Chemicals plc;
- (c) the agreement dated 4th May 1993 entered into between the Executive and the British Railways Board;
- (d) the agreement dated 10th May 1993 entered into between the Executive, the Council and the British Waterways Board;
- (e) the agreement dated 4th May 1993 entered into between the Executive, the Council and Leeds Development Corporation;
- (f) the undertaking dated 4th May 1993 entered into between the Executive and National Westminster Bank plc;
- (g) the undertaking dated 10th May 1993 entered into between the Executive and Ind Coope (Oxford and West) Limited and Joshua Tetley and Son Limited.

(2) In the application of any of those undertakings and agreements to the powers of this Order, so far as the context permits references in them to “the intended Act” (or “the Intended Act”) shall be treated as including reference to this Order and references to “the deposited plans” as including reference to the land plans.

#### *British Railways Board*

2.—(1) In this paragraph, “the agreement” means the agreement referred to in paragraph 1(1) (c) above.

(2) In the application of the agreement to the powers conferred by this Order—

- (a) any reference to the British Railways Board shall include a reference to Railtrack (as defined in paragraph 2 of Schedule 5 above); and
- (b) clause 4(2) of the agreement shall have effect so as (unless otherwise agreed) to require the notices to treat there mentioned to be served within the period of 5 years beginning with the day on which this Order comes into force.

#### *British Waterways Board*

3.—(1) In this paragraph, “the agreement” means the agreement referred to in paragraph 1(1) (d) above.

(2) Clause 7(1)(a) (and so far as relating thereto clause 7(4)) of the agreement shall cease to have effect, provided that Work No. 1 authorised by article 13(1) above is constructed with two lanes for vehicular traffic with footways on either side of the carriageway and with a means of access to those lanes at or about point A on drawing FAS/990483/1B attached to the agreement.

(3) Clause 7(5) of the agreement shall apply to the said Work No. 1.



(4) The power conferred by article 6 above includes power to acquire any such easement or right as is referred to in clause 8(1)(a) of the agreement.

(5) In the application of the agreement to the powers conferred by this Order—

- (a) the reference in clause 8(1) to the passing of the intended Act shall be treated as a reference to the coming into force of this Order;
- (b) clause 15(1) to (3) of the agreement (and so far as relating to those provisions, clause 15(4) of the agreement) shall apply to the works authorised by this Order as it applies to the specified works referred to in the agreement, treating references to section 23 of the 1993 Act as including reference to article 18 above.

#### *Leeds Development Corporation*

4.—(1) In this paragraph, “the agreement” means the agreement referred to in paragraph 1(1)(e) above.

(2) Paragraph 1 of this Schedule and sub-paragraph (3) of this paragraph apply insofar as there are any such successors in title to or assigns of the Leeds Development Corporation as are referred to in the definition of “the Corporation” in clause 1(1) of the agreement entitled to enforce the agreement.

(3) Clause 3(2)(a) and (5) of the agreement shall cease to have effect, provided that Work No. 1 authorised by article 13(1) above is constructed with two lanes for vehicular traffic with footways on either side of the carriageway and with a means of access to the two lanes at or about point A on drawing FAS/990483/1B attached to the agreement.

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### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order confers fresh powers of compulsory acquisition on West Yorkshire Passenger Transport Executive and Leeds City Council for the purposes of the works authorised by the Leeds Supertram Act 1993. Powers of compulsory acquisition under that Act expired on 26th July 1998.

The Order also authorises a realignment of Chadwick Street and Waterloo Street in the City of Leeds, and makes other ancillary provision for the tramway authorised by the 1993 Act, including provision continuing the effect of certain agreements made between the Executive and petitioners against the Bill for the 1993 Act.

Copies of the land plans, the works plan and the book of reference may be inspected during normal office hours at the offices of the Executive, Wellington House, 40–50 Wellington Street, Leeds, LS1 2DE.