

2005 No. 1163

TRANSPORT AND WORKS, ENGLAND
TRANSPORT, ENGLAND

The Telford Railfreight Terminal (Donnington) Order 2005

Made - - - - - 13th April 2005

Coming into force - - - 4th May 2005

ARRANGEMENT OF ARTICLES

PART 1

PRELIMINARY

1. Citation and commencement
2. Interpretation
3. Incorporation of Railways Clauses Consolidation Act 1845

PART 2

WORKS PROVISIONS

Principal powers

4. Power to construct and maintain scheduled works
5. Power to construct and maintain ancillary works
6. Power to deviate
7. Level crossings

Supplemental powers

8. Discharge of water
9. Power to survey and investigate land

Streets

10. Stopping up of ways, etc.
11. Ways to be provided or reconstructed
12. Temporary stopping up of streets, etc.

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

13. Power to acquire land
14. Application of Part I of Compulsory Purchase Act 1965
15. Power to acquire new rights

[DfT 13498]

Compensation

16. Disregard of certain interests and improvements

Supplementary

17. Acquisition of part only of certain properties
18. Extinction of private rights of way
19. Time limit for exercise of powers of acquisition

PART 4

MISCELLANEOUS AND GENERAL

Noise

20. Defence to proceedings in respect of statutory nuisance

Miscellaneous

21. Trespass on railways, etc.
22. Power to operate and use authorised works
23. Powers of disposal, agreements for operation, etc.
24. Application of landlord and tenant law
25. Planning permission: supplementary matters
26. Statutory undertakers, etc.
27. For protection of specified undertakers
28. For protection of Network Rail Infrastructure Limited
29. For protection of Environment Agency
30. Saving for Railways Act 1993
31. Certification of plans, etc.
32. Maintenance of approved works, etc.
33. Service of notices
34. Application of existing enactments
35. Disclosure of confidential information
36. No double recovery
37. Arbitration

SCHEDULES

- 1 The scheduled works
- 2 Level crossings
- 3 Ways to be stopped up
 - Part 1—Ways for which no substitute is to be provided
 - Part 2—Ways for which a substitute is to be provided
 - Part 3—Street in which vehicular rights only are to be extinguished
- 4 Ways to be provided or reconstructed
 - Part 1—New ways
 - Part 2—Ways to be temporarily stopped up and reconstructed as footpaths/cycleways
- 5 Additional lands which may be acquired or used
- 6 Modification of compensation and compulsory purchase enactments for creation of new rights
- 7 Statutory undertakers, etc.
- 8 Protective provisions
 - Part 1—Protection for electricity, gas and water undertakers
 - Part 2—Protection for code operators

Part 3—Protection for sewerage undertakers

- 9 For protection of Network Rail Infrastructure Limited
- 10 For protection of Environment Agency

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

And whereas the Secretary of State, having considered the objections made and not withdrawn, 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 31st March 2005;

Now, therefore, the Secretary of State, in exercise of the powers conferred by sections 1 and 5 of, and paragraphs 1 to 5, 7, 8, 10, 11, 15, 16 and 17 of Schedule 1 to, the 1992 Act and of all other powers enabling him in that behalf, hereby makes the following Order:

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Telford Railfreight Terminal (Donnington) Order 2005 and shall come into force on 4th May 2005.

Interpretation

2.—(1) In this Order—

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

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

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

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

“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;

“the Council” means the Council of the Borough of Telford & Wrekin;

“carriageway”, “cycleway” and “footpath” have the same meanings as in the Highways Act 1980(g);

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

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

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

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

(a) S.I. 2000/2190.

(b) 1992 c. 42.

(c) 1961 c. 33.

(d) 1965 c. 56.

(e) 1984 c. 27.

(f) 1990 c. 8.

(g) 1980 c. 66.

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

“the Order limits” means any of the limits of deviation or the limits of land to be acquired or used;

“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 railways” means the railways comprised in the authorised works;

“the rights of way maps” means the rights of way maps certified by the Secretary of State as the rights of way maps for the purposes of this Order;

“the scheduled works” means the works specified in Schedule 1 to this Order;

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

“street” includes part of a street;

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

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

“the tribunal” means the Lands Tribunal;

“the undertaking” means the undertaking authorised by this Order; and

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

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

(3) All directions, distances, 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, length and point, and distances between points on a railway shall be taken to be measured along the centre line of the railway.

(4) Any reference in this Order to a point identified by a letter, with or without a number, shall be construed as a reference to the point so lettered on the land and works plans.

(5) Any reference in this Order to a work identified by the number of the work shall be construed as a reference to the work of that number authorised by this Order.

Incorporation of Railways Clauses Consolidation Act 1845

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

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

section 46 (crossing of roads—level crossings), subject to the modification in paragraph (4);

section 47 (provision in cases where roads are crossed on a level);

section 58 (company to repair roads used by them), except for the words from “and if any question” to the end;

section 68 (accommodation works by company);

section 71 (additional accommodation works by owners), except for the words “or directed by such justices to be made by the company” and “or, in case of difference, as shall be authorised by two justices”;

sections 72 and 73 (supplementary provisions relating to accommodation works);

section 77 (presumption that minerals excepted from acquisition of land);

(a) 1991 c. 22.

(b) 1845 c. 20.

sections 78 to 85E and Schedules 1 to 3 (minerals under railways), as respectively substituted and inserted by section 15 of the Mines (Working Facilities and Support) Act 1923(a);

section 145 (recovery of penalties); and

section 154 (transient offenders).

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

“the company” means the Council;

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

“the special Act” means this Order.

(3) Section 24 of the said Act of 1845, as incorporated in this Order, shall have effect as if the maximum fine which may be imposed on summary conviction for an offence under that section were, instead of a fine not exceeding level 2 on the standard scale, a fine not exceeding level 3 on the standard scale.

(4) In section 46 of the said Act of 1845, as incorporated in this Order, for the proviso there shall be substituted the words “Provided always, that, with the consent of the highway authority and subject to such conditions as the authority may reasonably impose, the railway may be carried across a highway on the level”.

PART 2

WORKS PROVISIONS

Principal powers

Power to construct and maintain scheduled works

4.—(1) The Council may construct and maintain the scheduled works.

(2) Subject to article 6, the scheduled works shall be constructed in the lines or situations shown on the works plans and in accordance with the levels shown on the sections.

(3) The railway authorised as Work No. 1 shall not be opened to traffic until the Council has completed the construction of the acoustic bund authorised as Work No. 5 and has provided the acoustic barrier between points C and D on sheet 7 of the works plans.

Power to construct and maintain ancillary works

5.—(1) The Council may, within the limits of deviation for the scheduled works, do such of the following as may be necessary or expedient for the purposes of, in connection with or in consequence of, the construction of the scheduled works, namely—

(a) make, provide and maintain all such approaches, bridges, ramps, means of access, shafts and stagings as the Council thinks fit;

(b) construct, provide and maintain all such embankments, aprons, abutments, retaining walls, wing walls, culverts and other works as may be necessary or convenient;

(c) alter the position of apparatus, including mains, sewers, drains and cables;

(d) alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses; and

(e) carry out and maintain such other works, of whatever description, as may be necessary or expedient.

(2) The Council may within the Order limits—

(a) carry out and maintain landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised works, and

(b) carry out and maintain works for the benefit or protection of land affected by the authorised works.

(a) 1923 c. 20.

Power to deviate

6. In constructing or maintaining any of the scheduled works, the Council may—
- (a) deviate laterally—
 - (i) in respect of Work No. 5, to any extent not exceeding 6.5 metres in any direction from the centre line of that work shown on the works plans; and
 - (ii) in respect of any other scheduled work, from the lines or situations shown on the works plans, within the limits of deviation for that work shown on those plans; and
 - (b) deviate vertically from the levels shown on the sections—
 - (i) in respect of Work No. 5, to any extent upwards or downwards within the maximum height of 6 metres specified in the description of that Work in Schedule 1 to this Order; and
 - (ii) in respect of any other scheduled work, to any extent not exceeding 3 metres upwards and to any extent downwards.

Level crossings

7.—(1) The Council may construct the railways so as to carry them on the level across the ways specified in Schedule 2 to this Order.

(2) The Council shall provide, maintain and operate at or near any level crossing laid out in accordance with paragraph (1) such barriers or other protective equipment as the Health and Safety Executive may in writing require.

(3) Without prejudice to the generality of article 6, the Council may in the exercise of the powers conferred by this article alter the level of any way specified in Schedule 2 to this Order.

4) In this article—

“barrier” includes gate;

“protective equipment” includes lights, traffic signs (within the meaning of section 64(1) of the 1984 Act), manual, mechanical, automatic, electrical or telephonic equipment or other devices.

Supplemental powers

Discharge of water

8.—(1) The Council may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised works and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, sewer or drain.

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

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

(5) The Council 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(a).

(a) 1991 c. 57.

(7) In this article—

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

Power to survey and investigate land

9.—(1) The Council may for the purposes of this Order—

- (a) survey or investigate any land within the Order limits;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions as it thinks fit on any such land to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on any such land;
- (d) place on, leave on and remove from the land apparatus for use in connection with the exercise of any of the powers conferred by sub-paragraphs (a) to (c); and
- (e) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (d).

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

(3) Any person entering land under this article on behalf of the Council—

- (a) shall, if so required, before or after entering the land produce written evidence of his authority to do so; and
- (b) may take with him such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes shall be made under this article in a carriageway or footway without the consent of the street authority, but such consent shall not be unreasonably withheld.

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

Streets

Stopping up of ways, etc.

10.—(1) Subject to the provisions of this article, the Council may, in connection with the construction of the authorised works—

- (a) stop up the ways specified in columns (1) and (2) of Parts 1 and 2 of Schedule 3 to this Order to the extent specified, by reference to the letters and numbers shown on the rights of way maps, in column (3) of those Parts of that Schedule; and
- (b) stop up vehicular rights only over the street specified in columns (1) and (2) of Part 3 of Schedule 3 to this Order to the extent specified, by reference to the letters shown on the works plans, in column (3) of that Part of that Schedule.

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

(3) The condition referred to in paragraph (2) is that—

- (a) the Council is in possession of the land,
- (b) there is no right of access to the land from the way concerned,

(c) there is reasonably convenient access to the land otherwise than from the way concerned,

(d) the owners and occupiers of the land have agreed to the stopping up.

(4) No way specified in columns (1) and (2) of Part 2 of Schedule 3 (being a way to be stopped up for which a substitute is to be provided) shall be wholly or partly stopped up under this article until the new way to be substituted for it, and which is specified in relation to it either by reference to the letters and numbers shown on the works plans or by reference to one of the scheduled works, in either case 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.

(5) Where a way has been stopped up under this article—

(a) all rights of way over or along the way so stopped up shall be extinguished; and

(b) the Council may, without making any payment but subject to sections 77 to 85E of, and Schedules 1 to 3 to, the Railways Clauses Consolidation Act 1845 (which relate to minerals under railways) appropriate and use for the purpose of its railway undertaking so much of the site of the way as is bounded on both sides by land owned by the Council.

(6) Any person who suffers loss by the extinguishment of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part I of the 1961 Act.

(7) This article is subject to paragraph 2 of Schedule 7 to this Order.

Ways to be provided or reconstructed

11. The Council may, in connection with the construction of the authorised works, provide each of the ways mentioned in Part 1 of Schedule 4 to this Order and reconstruct each of the ways mentioned in Part 2 of that Schedule.

Temporary stopping up of streets, etc.

12.—(1) The Council, during and for the purposes of the execution of the authorised works, may temporarily stop up, alter or divert any street in the Borough of Telford & Wrekin and may for any reasonable time—

(a) divert the traffic from the street, and

(b) subject to paragraph (3), prevent all persons from passing along the street.

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

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

(4) Without prejudice to the generality of paragraph (1), the Council may exercise the powers conferred by this article in relation to the ways specified in Part 2 of Schedule 4 to this Order to the extent specified in that Schedule.

(5) The Council shall not exercise the powers conferred by this article—

(a) in relation to any street specified as mentioned in paragraph (4) without first consulting the street authority; and

(b) in relation to any other street without the consent of the street authority, but such consent shall not be unreasonably withheld.

(6) The provisions of the Street Works Act mentioned in paragraph (7) and any regulations made, or code of practice issued or approved under, those provisions shall apply (with the necessary modifications) in relation to the stopping up, alteration or diversion of a street by the Council 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 the street by the Council.

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

section 54 (advance notice of certain works);

section 55 (notice of starting date of works);

section 59 (general duty of street authority to co-ordinate works);

section 60 (general duty of undertakers to co-operate);
section 69 (works likely to affect other apparatus in the street);
section 76 (liability for cost of temporary traffic regulation);
section 77 (liability for cost of use of alternative route); and
all such other provisions as apply for the purposes of the provisions mentioned above.

(8) Any person who suffers loss by the suspension of a private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part I of the 1961 Act.

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

13.—(1) The Council may acquire compulsorily so much of the land shown on the land plans within the Order limits and described in the book of reference as may be required for or in connection with the authorised works, and may use any land so acquired for those purposes or for any other purposes connected with or ancillary to its railway undertaking.

(2) Without prejudice to the generality of paragraph (1), the Council may acquire compulsorily for the purposes specified in column (1) of Schedule 5 to this Order all or any of the land shown on the land plans within the limits of land to be acquired or used and so described in the book of reference as is referred to in columns (2) and (3) of that Schedule.

Application of Part I of Compulsory Purchase Act 1965

14.—(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(a) applies; and
- (b) as if this Order were a compulsory purchase order under that Act.

(2) Part I of the 1965 Act, as so applied, shall have effect as if 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.

Power to acquire new rights

15.—(1) The Council may compulsorily acquire such easements or other rights over any land referred to in article 13 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 6 to this Order), where the Council acquires a right over land under paragraph (1) it shall not be required to acquire a greater interest in it.

(3) Schedule 6 to this Order shall have effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right.

(4) In so far as it applies to land specified in paragraph (5), paragraph (1) shall be treated as also authorising acquisition of easements or other rights by a statutory utility in any case where the Secretary of State gives his consent in writing.

(a) 1981 c. 67.

(5) Paragraph (4) applies to land within the limits of deviation which is or will be required for use in relocating any apparatus which it is expedient to divert or replace in consequence of the carrying out of the works authorised by this Order; and in that paragraph “statutory utility” means a licence holder within the meaning of Part I of the Electricity Act 1989^(a), a gas transporter within the meaning of Part I of the Gas Act 1986^(b), a water undertaker within the meaning of the Water Industry Act 1991^(c), a sewerage undertaker within the meaning of Part I of that Act and any local authority which is a relevant authority for the purposes of section 97 of that Act.

Compensation

Disregard of certain interests and improvements

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

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

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

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

Supplementary

Acquisition of part only of certain properties

17.—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 14) 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 Council 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 Council 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.

(a) 1989 c. 29.

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

(c) 1991 c. 56.

(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 Council is authorised to acquire compulsorily under this Order.

(8) If the Council 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 Council 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 Council may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, if it does so, shall pay the owner compensation for any loss or expense occasioned to him by the giving and withdrawal of the notice, to be determined, in case of dispute, by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or factory or of land consisting of a house with a park or garden, the Council shall pay him compensation for any loss sustained by him due to the severance of that part in addition to the value of the interest acquired.

Extinction of private rights of way

18.—(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 Council, whether compulsorily or by agreement, or

(b) on the entry on the land by the Council under section 11(1) of the 1965 Act, whichever is sooner.

(2) Any person who suffers loss by the extinguishment of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part I of the 1961 Act.

(3) This article does not apply in relation to any right of way to which section 271 or 272 of the 1990 Act (extinguishment of rights of statutory undertakers, etc.) applies.

Time limit for exercise of powers of acquisition

19. No notice to treat shall be served under Part I of the 1965 Act, as applied to the acquisition of land by article 14, after the end of the period of 5 years beginning on the day on which this Order comes into force.

PART 4

MISCELLANEOUS AND GENERAL

Noise

Defence to proceedings in respect of statutory nuisance

20.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (summary proceedings by persons aggrieved by statutory nuisances) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order shall be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows—

- (a) that the nuisance relates to premises used by the Council for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works, and
 - (b) that the nuisance is attributable to the carrying out of works which are being carried out in accordance with a notice served under section 60 (or a consent given under section 61 or 65) of the Control of Pollution Act 1974(b).
- (2) The following provisions of the Control of Pollution Act 1974, namely—
- (a) section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990); and
 - (b) section 65(8) (corresponding provision in relation to consent for registered noise level to be exceeded),

shall not apply where the consent relates to the use of premises by the Council for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works.

Miscellaneous

Trespass on railways, etc.

21.—(1) Any person who trespasses on the railways or on any enclosed land adjoining the railways and forming part of the undertaking shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) No person shall be convicted of an offence under this article unless it is shown that notices warning the public not to trespass upon the railways or any such land as is referred to in paragraph (1) were clearly exhibited and maintained at distances of not more than one kilometre apart along the boundary fence of the railways.

Power to operate and use authorised works

22. The Council may operate and use the authorised works as a system, or part of a system, of transport for the carriage of goods.

(a) 1990 c. 43.

(b) 1974 c. 40.

Powers of disposal, agreements for operation, etc.

23.—(1) In this article—

“lease” includes an underlease and “lease”, where used as a verb, shall be construed accordingly;

“the transferee” means any person to whom the undertaking, or any part of it, is leased, sold or otherwise disposed of pursuant to this article; and

“the transferred undertaking” means so much of the undertaking as is leased, sold or otherwise disposed of pursuant to this article.

(2) The Council may, with the consent of the Secretary of State, sell, lease, charge or otherwise dispose of on such terms and conditions as it thinks fit, the whole or any part of the undertaking.

(3)(a) Except as may be otherwise provided in this Order, the transferred undertaking shall continue to be subject to all statutory or other provisions applicable to the transferred undertaking at the date of the lease, sale or other disposal (in so far as the same are still subsisting and capable of taking effect) and the transferee shall, to the exclusion of the Council, be entitled to the benefit of, and to exercise, all rights, powers and privileges, and be subject to all obligations, statutory or otherwise relating to the transferred undertaking (in so far as the same are still subsisting and capable of taking effect) to the intent that the Council shall be released from all such obligations.

(b) This paragraph shall have effect during the term of any lease and from the operative date of any sale or other disposal under paragraph (2).

(4) Without prejudice to the generality of paragraph (2), the Council may enter into and carry into effect agreements with respect to any of the following matters, namely, the construction, maintenance, use and operation of the undertaking or of any works comprised in it, by any other person, and other matters incidental or subsidiary thereto or consequential thereon, and the defraying of, or the making of contributions towards, the cost of the matters aforesaid by the Council or any other person.

(5) Any agreement under paragraph (4) may provide for the exercise of the powers of the Council under this Order by any other person and for the transfer to any person of the undertaking or any part or parts thereof together with the rights and obligations of the Council in relation thereto.

(6) The exercise of the powers under any enactment by any person in pursuance of any sale, lease, charge or other disposal under paragraph (2) or of any agreement under paragraph (4) shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those powers were exercised by the Council.

Application of landlord and tenant law

24.—(1) This article applies to any agreement for leasing to any person the whole or any part of the authorised works or the right to operate the same, and any agreement entered into by the Council with any person for the construction, maintenance, use or operation of the authorised works, or any of those works, so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person’s use.

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

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

(a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;

(b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or

(c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Planning permission: supplementary matters

25.—(1) Planning permission which is deemed by a direction under section 90(2A) of the 1990 Act to be granted in relation to works authorised by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of that Act (cases in which land is to be treated as operational land for the purposes of that Act).

(2) In relation to the application of paragraph (3)(c) of the second Schedule of the Form of Tree Preservation Order set out in the Second Schedule to the Town and Country Planning (Tree Preservation Order) Regulations 1969(a) (including that paragraph as applied by regulation 3(ii) of the Town and Country Planning (Tree Preservation Order)(Amendment) and (Trees in Conservation Areas) (Exempted Cases) Regulations 1975(b), or as incorporated in any tree preservation order), any direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to works authorised by this Order shall be treated as deeming the permission to have been granted on application made under Part III of that Act for the purposes of that Part.

(3) In relation to the application of article 5(1)(d) of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Trees) Regulations 1999(c) as incorporated in any tree preservation order or as having effect by virtue of regulation 10(1)(a) of those Regulations, any direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to the works authorised by this Order shall not be treated as an outline permission.

Statutory undertakers, etc.

26. The provisions of Schedule 7 to this Order shall have effect.

For protection of specified undertakers

27. The provisions of Schedule 8 to this Order shall have effect.

For protection of Network Rail Infrastructure Limited

28. The provisions of Schedule 9 to this Order shall have effect.

For protection of Environment Agency

29. The provisions of Schedule 10 to this Order shall have effect.

Saving for Railways Act 1993

30. Nothing in this Order or in any enactment incorporated with or applied by this Order, shall prejudice or affect the operation of Part I of the Railways Act 1993(d).

Certification of plans, etc.

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

(a) S.I. 1969/17.

(b) S.I. 1975/148.

(c) S.I. 1999/1892.

(d) 1993 c. 43.

Maintenance of approved works, etc.

32.—(1) Where pursuant to regulations^(a) made under section 41 of the 1992 Act (approval of works, plant and equipment) approval has been obtained from the Health and Safety Executive with respect to any works, plant or equipment (including vehicles) forming part of the railways, such works, plant and equipment shall not be used in a state or condition other than that in which they were at the time that the approval was given unless any change thereto does not materially impair the safe operation of the railways.

(2) If without reasonable cause the provisions of paragraph (1) are contravened, the Council shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) No proceedings shall be instituted in England and Wales in respect of an offence under this article except by or with the consent of the Health and Safety Executive or the Director of Public Prosecutions.

Service of notices

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

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, his last known address at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and his name or address cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to him by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) This article shall not be taken to exclude the employment of any method of service not expressly provided for by it.

Application of existing enactments

34.—(1) In this article—

“BRB” means BRB (Residuary) Limited;

“the former railway” means so much of any railway or former railway as is situated within the Order limits but does not include any operational railway of Network Rail Infrastructure Limited;

“the relevant date” means—

- (a) in relation to so much of the former railway as is owned by the Council at the date of the coming into force of this Order, that date; and
- (b) in relation to any part of the former railway which at that date is not so owned, the earlier of the date upon which the Council acquires that part or the date upon which the Council takes entry for the purpose of constructing the authorised works.

(a) See S.I. 1994/157.

(b) 1978 c. 30.

(2) Except as may be otherwise provided in this Order, as from the relevant date the former railway or any part thereof shall continue to be subject to all statutory and other provisions applicable to it, or any part thereof, at that date (in so far as the same are still subsisting and capable of taking effect) and the Council shall, to the exclusion of BRB, be entitled to the benefit of, and to exercise, all rights, powers and privileges and be subject to all obligations statutory or otherwise relating to the former railway (in so far as the same are still subsisting and capable of taking effect), to the intent that BRB shall be released from all such obligations.

(3) Any enactment by which the former railway was authorised shall have effect subject to the provisions of this Order.

Disclosure of confidential information

35. A person who—

(a) enters a factory, workshop or workplace in pursuance of the provisions of article 9 above; and

(b) discloses to any person any information obtained by him relating to any manufacturing process or trade secret,

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

No double recovery

36. 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

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

Signed by authority of the Secretary of State for Transport

13th April 2005

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

SCHEDULES

SCHEDULE 1

Articles 2(1) and 4

THE SCHEDULED WORKS

In the County of the Wrekin, Borough of Telford & Wrekin—

Work No. 1—A railway (4,775 metres in length), commencing in the parish of Wellington by a junction with the existing Shrewsbury to Wolverhampton railway at a point on the east side of the bridge (Junction Bridge) carrying Mill Lane over the said existing railway, passing eastwards through the parishes of Hadley and Leegomery and Wrockwardine Wood and Trench along the course of the former Wellington to Stafford railway and terminating in the parish of Lilleshall and Donnington within the site of the Ministry of Defence depot at a point beside the boundary fence of the said depot adjoining the A518 road.

Work No. 2A—A railway (212 metres in length) in the parish of Hadley and Leegomery, comprising a branch railway into the works of GKN Sankey Limited (“GKN”), commencing by a junction with Work No. 1 at chainage 1871 metres, extending in a north north-easterly direction and terminating at a point 4 metres from the wall of the GKN factory.

Work No. 2B—A railway (312 metres in length) in the parish of Hadley and Leegomery, comprising a branch railway into the works of GKN, commencing by a junction with Work No. 1 at chainage 2,720 metres, extending in a westerly direction and terminating at a point 55 metres west of the western end of the open section of the disused Shropshire Union Canal.

Work No. 3A—A railway (409 metres in length) in the parish of Lilleshall and Donnington, comprising a branch railway within the proposed railfreight terminal, commencing by a junction with Work No. 1 at chainage 4,302 metres, extending in a north north-westerly direction and terminating at a point 131 metres east of a point on the eastern side of Hortonwood 37 opposite its junction with Hortonwood 7.

Work No. 3B—A railway (352 metres in length) in the parish of Lilleshall and Donnington, comprising a branch railway within the proposed railfreight terminal, commencing by a junction with Work No. 1 at chainage 4,510 metres, extending in a north westerly direction and terminating at a point 3 metres from the southern boundary of the estate road (South Avenue).

Work No. 4—A cycleway/footpath bridge over Trench Lock interchange, commencing in the parish of Hadley and Leegomery and terminating in the parish of Wrockwardine Wood and Trench.

Work No. 5—An acoustic bund in the parish of Wrockwardine Wood and Trench, consisting of a solid bank of earth of a height not exceeding 6 metres above the existing level of the ground and of a width, at the base thereof, not exceeding 11 metres, approximately parallel to, and to the south of, so much of Work No. 1 as adjoins Trench Road, Preston Grove and Stanmore Drive.

SCHEDULE 2

Article 7

LEVEL CROSSINGS

Parish of Hadley and Leegomery

Way between Summerhouse Drive and Hurleybrook Way

Parish of Wrockwardine Wood and Trench

Horton Road

Way linking Trench Road and A518 at chainage 3,550 metres

WAYS TO BE STOPPED UP

PART 1

WAYS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

(1) <i>Parish</i>	(2) <i>Way to be stopped up</i>	(3) <i>Extent of stopping up</i>
Wellington	Ways over former railway land	Ways over area shown hatched and bounded by points A1, A2, A3 and A4
Hadley and Leegomery	Ways over former railway land	Ways over area shown hatched and bounded by points E2, E3, E4 and E5
Hadley and Leegomery	Ways over former railway land	Ways over area shown hatched and bounded by points H1, H2, H3 and H4
Wrockwardine Wood and Trench	Ways over former railway land	Ways over area shown hatched and bounded by points U1, U2, U3 and U4
Wrockwardine Wood and Trench	Ways over former railway land	Between points U5 and U6

PART 2

WAYS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

(1) <i>Parish</i>	(2) <i>Way to be stopped up</i>	(3) <i>Extent of stopping up</i>	(4) <i>New way to be substituted</i>
Hadley and Leegomery	Ways over former railway land	Ways over area shown hatched and bounded by points D1, D2, D3 and D4	Footpath and cycleway between points D and F2
Wellington	Way connecting former railway with Whitchurch Drive	Between points B1 and B2	Steps between points B and C
Hadley and Leegomery	Way connecting former railway with Whitchurch Drive	Between points C1 and C2	Steps between points B and C
Hadley and Leegomery	Way to the rear of Hurleybrook Way	Between points E, E1 and E2	Footpath and cycleway between points D, F2 and F1
Hadley and Leegomery	Way over former railway bridge at Leegate Avenue	Between points L1 and L2	Footpath and cycleway between points F and M1
Wrockwardine Wood and Trench	Ways over former railway land	Ways over area shown hatched and bounded by points R1, R2, R3 and R4	Footpath and cycleway between points S1 and S5
Wrockwardine Wood and Trench	Ways over former railway land	Ways over area shown hatched and bounded by points T1, T2, T3 and T4	Footpath and cycleway between points S1 and S5
Hadley and Leegomery and Wrockwardine Wood and Trench	Way over former railway bridge at Trench Lock Interchange	Way between points N1, N2 and N3	Work No. 4
Wrockwardine Wood and Trench	Way under former railway bridge at Trench Lock Interchange	Way between points N3, Q1 and Q5	Footpath and cycleway between points N3, Q3, Q4 and Q5

PART 3

STREET IN WHICH VEHICULAR RIGHTS ONLY ARE TO BE
EXTINGUISHED

(1) <i>Parish</i>	(2) <i>Street to be affected</i>	(3) <i>Extent of stopping up</i>
Wrockwardine Wood and Trench	Horton Road	Between points A and B, and C and D

SCHEDULE 4

Article 11

WAYS TO BE PROVIDED OR RECONSTRUCTED

PART 1

NEW WAYS

(1) <i>Parish</i>	(2) <i>Way to be provided</i>
Wellington Wellington	Footpath and cycleway between points A and D Steps between points B and C

PART 2

WAYS TO BE TEMPORARILY STOPPED UP AND RECONSTRUCTED AS
FOOTPATHS/CYCLEWAYS

(1) <i>Parish</i>	(2) <i>Way to be temporarily stopped up and reconstructed</i>
Hadley and Leegomery	Between points F1 and F2
Wrockwardine Wood and Trench	Between points N3, Q3, Q4 and Q5
Wrockwardine Wood and Trench	Between points S3 and S4
Wrockwardine Wood and Trench	Between points S5 and S6

SCHEDULE 5

Article 13(2)

ADDITIONAL LANDS WHICH MAY BE ACQUIRED OR USED

(1) <i>Purpose</i>	(2) <i>Location</i>	(3) <i>Number of land shown on land plans</i>
Provision and maintenance of footpath/cycleway	Adjacent to Whitchurch Drive	1A and 2A
Provision and maintenance of footpath/cycleway	Rear of Hurleybrook Way	2B and 3
Provision and maintenance of footpath/cycleway	Rear of Hurleybrook Way and Chockleys Drive	4
Provision and maintenance of footpath/cycleway	Rear of Chockleys Drive	5, 6 and 7
Provision and maintenance of footpath/cycleway	Adjoining unnamed turning off Britannia Way	8 and 8A
Provision and maintenance of footpath/cycleway	Adjacent to Castle Lane	9
Provision and maintenance of footpath/cycleway	Adjacent to Trench Lock Interchange	17A

(1) <i>Purpose</i>	(2) <i>Location</i>	(3) <i>Number of land shown on land plans</i>
Provision and maintenance of footpath/cycleway	Adjacent to Horton Road	18A
Provision and maintenance of footpath/cycleway	South of A518 road	22A
Construction and maintenance of Work No. 5	Rear of Stanmore Drive and adjoining the allotment gardens	28
Construction and maintenance of acoustic fence	Adjacent to A518 road	29

SCHEDULE 6

Article 14

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

Compensation enactments

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

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

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

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

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

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

Adaptation of the 1965 Act

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

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

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

(a) 1973 c. 26.

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

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

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

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

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

the Telford Railfreight Terminal (Donnington) Order 2005 (“the Order”) shall, in relation to that person, cease to authorise the purchase of the right and be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice shall be deemed to have been served in respect of that interest on such date as the tribunal directs.

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

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of six weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this sub-section 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 has served notice to treat in respect of any right, it has power, exercisable in the like circumstances and subject to the like conditions, to enter for the purpose of exercising that right (which shall be deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act shall be modified correspondingly.

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

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

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 Council under this Order subject to the following provisions of this paragraph; and all such other provisions of that Act as apply for the purposes of those provisions (including sections 275 to 278, which contain provisions consequential on the extinguishment of any rights under sections 271 and 272, and sections 279(2) to (4), 280 and 282, which provide for the payment of compensation) shall have effect accordingly.

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

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

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

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

(b) the owner of a private sewer which communicated with that sewer,

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

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

(6) In this paragraph—

“code operator” means a provider of an electronic communications network in whose case the electronic communications code is applied by a direction under section 103 of the Communications Act 2003(a); and

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

Apparatus of statutory undertakers, etc. in stopping up streets

2.—(1) Where a street is stopped up under article 10 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 10 of this Order any statutory utility whose apparatus is under, in, upon, over, along or across the street may and, if reasonably requested so to do by the Council, shall—

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

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

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

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

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

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

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

(a) 2003 c. 21.

(b) 1980 c. 66.

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

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

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

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

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

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

(8) In this paragraph—

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

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

“statutory utility” means a statutory undertaker for the purposes of the Highways Act 1980 or a code operator as defined in paragraph 1(6).

SCHEDULE 8

Article 27

PROTECTIVE PROVISIONS

PART 1

PROTECTION FOR ELECTRICITY, GAS AND WATER UNDERTAKERS

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

(2) In this Part of this Schedule—

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

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989^(a)) belonging to or maintained by that undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter within the meaning of Part I of the Gas Act 1986^(b) for the purposes of gas transportation and storage; and
- (c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply;

(not being apparatus in respect of which the relations between the Council and the undertakers are regulated by the provisions of Part III of the Street Works Act) and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

(a) 1989 c. 29.

(b) 1986 c. 44. A new section 1 was substituted by section 5 of the Gas Act 1995 c. 45 and was further amended by section 76 of the Utilities Act 2000 c. 27.

“functions” includes powers and duties;

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

“plan” includes section, method statements, programmes and staging proposals;

“undertaker” means any of the following, namely, a licence holder within the meaning of Part I of the Electricity Act 1989, a gas transporter within the meaning of Part I of the Gas Act 1986 and a water undertaker within the meaning of the Water Industry Act 1991(a); and, in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

(3) The provisions of Schedule 7 to this Order shall not apply in relation to apparatus to which this Part of this Schedule applies.

2.—(1) Where by reason of this Order any part of any highway in which any apparatus is situated ceases to be part of a highway an undertaker may exercise the same rights of access to such apparatus as it enjoyed immediately before the coming into force of this Order, and the Council shall grant to the undertaker legal easements satisfactory to the undertaker in respect of such apparatus and access thereto, but nothing in this paragraph shall affect any right of the Council or of the undertaker to require the removal of such apparatus under this Part of this Schedule or the power of the Council to execute works in accordance with paragraph 5(7) below.

(2) The Council shall give to the undertaker a minimum of 3 months’ prior written notice in writing of its intention to stop up any street under article 10 of this Order.

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

4. Notwithstanding anything in this Order or shown on the land or works plans the Council shall not acquire any apparatus otherwise than by agreement.

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

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the Council require the removal of any apparatus placed in that land, they shall give to the undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers of this Order an undertaker reasonably needs to remove any of its apparatus) the Council shall, subject to sub-paragraph (3), afford to the undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the Council and thereafter for the maintenance of that apparatus.

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

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

(5) Any alternative apparatus to be constructed in land of the Council under this Part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between the undertaker in question and the Council or in default of agreement settled by arbitration pursuant to article 37.

(6) The undertaker in question shall, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 37, and after the grant to the undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed with all reasonable dispatch to construct and bring into operation the alternative apparatus and thereafter to remove any apparatus required by the Council to be removed under the provisions of this Part of this Schedule.

(a) 1991 c. 56.

(7) Notwithstanding anything in sub-paragraph (6), if the Council gives notice in writing to the undertaker in question that they desire themselves to execute any part of so much of the work necessary in connection with the construction of the alternative apparatus, or the removal of the apparatus required to be removed, as will take place in any land of the Council, that work, may, with the prior written consent of the undertaker (which shall not be unreasonably withheld or delayed and shall be subject to such conditions as are reasonable and proper to protect the apparatus), and, if the consent is obtained, shall be executed by the Council with all reasonable dispatch under the superintendence, if given, and to the reasonable satisfaction of the undertaker.

(8) Nothing in sub-paragraph (7) shall authorise the Council to execute the actual placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus or where the apparatus is that of a gas transporter and is operating or is capable of operating at or in excess of 7 bar pressure, within 1500 mm of the apparatus.

6.—(1) Where, in accordance with the provisions of this Part of this Schedule, the Council afford to an undertaker facilities and rights for the construction, and maintenance, in land of the Council of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the Council and the undertaker in question or in default of agreement settled by arbitration in accordance with article 37.

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

- (a) give effect to all reasonable requirements of the Council for ensuring the safety and efficient operation of the railway and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the Council or the traffic on the railway; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions applicable to the apparatus, if any, constructed in or along the railway for which the alternative apparatus is to be substituted.

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

7.—(1) Not less than 56 days before commencing the execution of any works of the type referred to in paragraph 5(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the Council under paragraph 5(2), the Council shall submit to the undertaker in question a plan of the works to be executed.

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

(3) Any requirements made by an undertaker under paragraph (2) shall be made within a period of 42 days beginning with the date on which a plan under paragraph (1) are submitted to it.

(4) If an undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the Council, reasonably require the removal of any apparatus and give written notice to the Council of that requirement, the foregoing provisions of this Part of this Schedule shall apply as if the removal of the apparatus had been required by the Council under paragraph 5(2).

(5) Nothing in this paragraph shall preclude the Council from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan in lieu of the plan previously submitted, and thereupon the provisions of this paragraph shall apply to and in respect of the new plan.

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

8.—(1) Subject to the following provisions of this paragraph, the Council shall repay to an undertaker the reasonable expenses incurred by that undertaker in, or in connection with the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 5(2) including for the avoidance of doubt the acquisition of any facilities or rights under paragraph 5(3).

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

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

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions, except where this has been solely due to using the nearest currently available type;
- (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 Council or, in default of agreement, is not determined by arbitration to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this paragraph would be payable to the undertaker in question by virtue of sub-paragraph (1), shall be reduced by the amount of that excess.

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

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

(5) An amount which apart from this sub-paragraph would be payable to an undertaker in respect of works by virtue of sub-paragraph (1) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit as calculated in accordance with the code of practice entitled “Measures Necessary Where Apparatus is Affected by Major Works (Diversionary Works)” and dated June 1992 and approved by the Secretary of State on 30 June 1992.

9.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works as are referred to in paragraph 5(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of an undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any undertaker, the Council shall—

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

by reason or in consequence of any such damage or interruption.

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

(3) An undertaker shall give the Council reasonable notice of any such claim or demand and no settlement or compromise shall be made without the consent of the Council which, if it withholds such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

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

PART 2

PROTECTION FOR CODE OPERATORS

11.—(1) For the protection of telecommunications operators the following provisions shall, unless otherwise agreed in writing between the Council and the telecommunications operators concerned, have effect.

(2) In this Part of this Schedule expressions defined in the Communications Act 2003 have the same meanings as in that Act.

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

PART 3

PROTECTION FOR SEWERAGE UNDERTAKERS

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

(2) In this Part of this Schedule—

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

“sewer” means a public sewer within the meaning of the Water Industry Act 1991(a) and includes a disposal main within the meaning of that Act and any manholes, ventilating shafts, pumps or accessories forming part of any such sewer;

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

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

(3) The provisions of Schedule 7 to this Order shall not apply in relation to apparatus to which this Part of this Schedule applies.

14.—(1) Before commencing the construction or renewal of any specified work and in the case of any temporary work its removal the Council shall submit to the undertaker plans of the work as described in sub-paragraph (2) (“the plans”) and shall not commence that work until the undertaker has signified in writing its approval of those plans.

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

(3) For the purpose of the preparation of the plans and subject to such reasonable requirements as it may specify, the undertaker shall permit the Council to have access to plans in its possession and to any of its sewers.

(4) Any approval of the undertaker required under this paragraph—

(a) may be given subject to reasonable conditions,

(b) shall not be unreasonably withheld, and

(c) shall be deemed to have been given if it is neither given nor refused within 56 days of the submission of plans for approval.

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

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

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

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

(a) 1991 c. 56.

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

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

(3) The undertaker shall give to the Council reasonable notice of any such claim or demand as aforesaid and no settlement or compromise thereof shall be made without the agreement in writing of the Council.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SCHEDULE 9

Article 28

FOR PROTECTION OF NETWORK RAIL INFRASTRUCTURE LIMITED

1.—(1) The following provisions of this Schedule shall, unless otherwise agreed in writing between the Council and the company, have effect—

(2) In this Schedule—

“the company” means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited 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) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

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

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

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail by the Secretary of State in exercise of his powers under section 8 of the Railways Act 1993;

“plans” includes sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals and programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway property” means any railway, station, works, apparatus and equipment belonging to the company and includes:

(a) any land held or used by the company; and

(b) any easement or other property interest held by or for the benefit of the company;

for the purposes of any such railway, station, works, apparatus or equipment;

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

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

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

(2) Without prejudice to any requirement as to fencing made by the company under paragraph 3(5) on approval of plans, the Council shall provide and maintain, to the reasonable satisfaction of the engineer, a boundary fence incorporating gates where appropriate between railway property and any adjoining land of the Council acquired or appropriated for the purpose of Work No. 1.

(3) The Council shall not exercise the powers conferred by article 9 or the powers conferred by section 11(3) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of the company.

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

(5) The Council shall not exercise the powers conferred by sections 271 or 272 of the 1990 Act, as applied by Schedule 7 to this Order, in relation to any right of access of the company to railway property but such right of access may be diverted with the consent of the company.

(6) Where the company is asked to give its consent pursuant to sub-paragraph (3), (4), or (5), or to give its consent to the acquisition of new rights over or the use of railway property under sub-paragraph (1), such consent shall not be unreasonably withheld but may be given subject to reasonable conditions.

3.—(1) The Council shall before commencing construction of any specified work supply to the company proper and sufficient plans of that work for the reasonable approval of the engineer and shall not commence such construction of the specified work until plans of that work have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) shall not be unreasonably withheld, and if by the end of the period of 56 days beginning with the date on which such plans have been supplied to the company the engineer has not intimated his disapproval of those plans and the grounds of his disapproval he shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 56 days beginning with the date on which such plans have been supplied to the company, the company gives notice to the Council that the company desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of the company then, if the Council desires such part of the specified work to be constructed, the company shall construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the Council in accordance with the plans approved or deemed to be approved or settled under this paragraph and under the supervision (where appropriate and if given) of the Council.

(4) When 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 construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of the company or the services of train operators using the same (including any relocation, decommissioning and removal of works, apparatus and equipment necessitated by specified work and the comfort and safety of passengers who may be affected by the specified work), and such protective works as may be reasonably necessary for those purposes shall be constructed by the company or by the Council, if the company so desires, such protective works shall be carried out by the Council at its own expense with all reasonable dispatch and the Council shall not commence the construction of specified work until the engineer has notified the Council that the protective works have been completed to his reasonable satisfaction.

4.—(1) Any specified work and any protective work to be constructed by virtue of paragraph 3(4) above shall when constructed be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 3(1) above;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and as little interference as may be with the conduct of traffic on the railways of the company;

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

(2) The Council shall give to the engineer not less than 90 days' notice of its intention to commence the construction of a specified work and shall give, except in emergency (when it shall give such notice as may be reasonably practicable), 90 days' notice of its intention to carry out any works for the maintenance or repair of a specified work in so far as such work of repair or maintenance may affect railway property.

5.—(1) The Council shall—

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

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

7.—(1) If any alterations or additions, either permanent or temporary, to railway property are reasonably necessary during the construction of a specified work or any protective works under paragraph 3(4) above, or during a period of 12 months after the commencement of regular revenue-earning train operations using the new railways comprised in any specified work, in consequence of the construction of a specified work, such alterations and additions may be carried out by the company and if the company gives the Council reasonable notice of its intentions to carry out such alterations and additions, the Council shall pay to the company the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by the company 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 referred to in paragraph 7(1) above a capitalised sum representing such saving shall be set off against any sum payable by the Council to the company under this paragraph.

8. The Council shall repay to the company all reasonable fees, costs, charges and expenses reasonably incurred by the company—

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

9.—(1) In this paragraph—

“EMI” means, subject to paragraph (2), electromagnetic interference with the company’s apparatus generated by the operation of the authorised works (including the operation of trains using the new railways comprised in the works) where such interference is of a level which adversely affects the safe operation of the company’s apparatus; and

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

(2) This paragraph shall apply to EMI only to the extent that such EMI is not attributable to any change to the company’s apparatus carried out after approval of plans under paragraph 3(1) for the relevant part of the authorised works giving rise to EMI (unless the Council has been given notice in writing before the approval of those plans of the intention to make such change), other than any change carried out by the company as part of or in consequence of the authorised works.

(3) Subject to sub-paragraph (5), the Council shall in the design and construction of the authorised works take all measures necessary to prevent EMI and shall establish with the company (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the Council’s compliance with sub-paragraph (3)—

- (a) the Council shall consult with the company as early as reasonably practicable to identify all the company’s apparatus which may be at risk of EMI, and thereafter shall continue to consult with the company (both before and after formal submission of plans under paragraph 3(1)) to identify all potential causes of EMI and the measures required to eliminate them;
- (b) the company shall make available to the Council all information in the company’s possession reasonably requested by the Council in respect of the company’s apparatus identified pursuant to paragraph (a);
- (c) the company shall allow the Council reasonable facilities for the inspection of the company’s apparatus pursuant to paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to the company’s apparatus, the company shall not withhold its consent unreasonably to modifications of the company’s apparatus, but the means of prevention and the method of their execution shall be selected in the company’s reasonable discretion and in relation to such modifications paragraph 3(1) shall have effect subject to this sub-paragraph.

(6) If at any time prior to the commencement of regular revenue-earning train operations on the new railways comprised in the authorised works and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised works causes EMI then the Council shall immediately upon receipt of notification by the company of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the Council’s apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to the company’s apparatus.

(7) In the event of EMI having occurred—

- (a) the Council shall afford reasonable facilities to the company for access to the Council’s apparatus in the investigation of such EMI;
- (b) the company shall afford reasonable facilities to the Council for access to the company’s apparatus in the investigation of such EMI; and
- (c) the company shall make available to the Council any additional material information in its possession reasonably requested by the Council in respect of the company’s apparatus or such EMI.

(8) Where the company approves modifications to the company’s apparatus pursuant to sub-paragraphs (5) or (6)—

- (a) the company shall allow the Council reasonable facilities for the inspection of the relevant part of the company’s apparatus;

(b) any modifications to the company's apparatus approved pursuant to those sub-paragraphs shall be carried out and completed by the Council in accordance with paragraph 4.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 13(1) shall apply to the costs and expenses reasonably incurred or losses suffered by the company through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to the company's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 8(a) any modifications to the company's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 37 to the Institution of Civil Engineers shall be read as a reference to the Institution of Electrical Engineers.

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

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

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

13.—(1) The Council shall pay to the company all reasonable costs, charges, damages and expenses not otherwise provided for in this Schedule which may be occasioned to or reasonably incurred by the company—

(a) by reason of the construction or maintenance of a specified work or the failure thereof; or

(b) by reason of any act or omission of the Council or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

and the Council shall indemnify the company from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission; and the fact that any act or thing may have been done by the company on behalf of the Council 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 the company or of any person in its employ or of its contractors or agents) excuse the Council from any liability under the provisions of this schedule.

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

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

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

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

(6) In this paragraph "the relevant costs" means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of the company's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1).

14. In the assessment of any sums payable to the company under this Schedule there shall not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by the company 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 Council under this Schedule or increasing the sums so payable.

15. The Council and the company may enter into, and carry into effect, agreements for the transfer to the Council of—

- (a) any railway property shown on the land or works 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 the company.

SCHEDULE 10

Article 29

FOR PROTECTION OF ENVIRONMENT AGENCY

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

(2) In this Schedule—

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

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

“drainage work” shall mean any watercourse and includes any land which is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence;

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

“plans” shall include sections, drawings, specifications and method statements;

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

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

“watercourse” shall include all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows (whether or not the flow is intermittent) except a public sewer.

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

(2) Any such specified work shall not be constructed except in accordance with such plans as may be approved in writing by the Environment Agency, or determined under paragraph 12.

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

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

3. Without prejudice to the generality of paragraph 2, the requirements which the Environment Agency may make under that paragraph include conditions requiring the Council 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—

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

4.—(1) Any specified work, and all protective works required by the Environment Agency under paragraph 3, shall be constructed—

- (i) with all reasonable despatch in accordance with the plans approved or deemed to have been approved or settled under this Schedule; and

- (ii) to the reasonable satisfaction of the Environment Agency, and the Environment Agency shall be entitled by its officer to watch and inspect the construction of such works.

(2) The Council shall give to the Environment 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 drainage work is constructed otherwise than in accordance with the requirements of this Schedule, the Environment Agency may by notice in writing require the Council, at the Council's own expense, to comply with the requirements of this Schedule or (if the Council so elects and the Environment 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 Environment Agency reasonably requires.

(4) Subject to sub-paragraph (5), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served upon the Council, 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 Environment Agency may execute the works specified in the notice and any expenditure incurred by it in so doing shall be recoverable from the Council.

(5) In the event of any dispute as to whether sub-paragraph (3) is properly 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 Environment Agency shall not except in emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

5.—(1) The Council 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 Council for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers of the Order or is already in existence.

(2) If any such work which the Council is liable to maintain is not maintained to the reasonable satisfaction of the Environment Agency, the Environment Agency may by notice in writing require the Council to repair and restore the work, or any part thereof, or (if the Council so elects and the Environment Agency in writing consents, such consent not to be unreasonably withheld), to remove the work and restore the site to its former condition, to such extent and within such limits as the Environment 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) on the Council, the Council 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 Environment Agency may do anything necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from that person.

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

6. 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 Council to the reasonable satisfaction of the Environment Agency and if the Council fails to do so, the Environment Agency may make good the same and recover from the Council the expense reasonably incurred by it in so doing.

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

(2) If by reason of—

- (i) the construction of any specified work, or
- (ii) the failure of any such work,

damage to the fishery is caused, or the Environment Agency has reason to expect that such damage may be caused, the Environment Agency may serve notice on the Council 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 Environment Agency of any damage or expected damage to the fishery, the Council fails to take such steps as are described in sub-paragraph (2), the Environment Agency may take those steps and may recover from the Council the expense reasonably incurred by it in doing so.

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

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

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

9.—(1) Without prejudice to the other provisions of this Schedule, the Council shall indemnify the Environment 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 Environment 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 authorised by this Order or any sewers, drains and watercourses,
- (d) any flooding or increased flooding of any such lands, or
- (e) inadequate water quality in any watercourse or other surface waters or in any groundwater,

which is caused by, or results from, the construction of any of the works or any act or omission of the Council, its contractors, agents or employees whilst engaged upon the work.

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

10. 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 Environment Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, shall not relieve the Council from any liability under the provisions of this Schedule.

11. For the purposes of Chapter II of Part II of the Water Resources Act 1991 (abstraction and impounding of water) and section 109 of that Act (as to structures in, over or under watercourses) as applying to the construction of any specified work, any consent or approval given or deemed to be given by the Environment Agency under this Schedule with respect to such construction shall be deemed also to constitute an impounding licence under that Chapter or, as the case may be, approval under that section, and the Council shall not be obliged to serve any notice which would otherwise be required by section 30 of the said Act of 1991 (which relates to the construction of boreholes and similar works in respect of which a licence is not required).

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

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for the construction of a railway and other works, and the acquisition of land and rights, in connection with the Telford Railfreight (Donnington) scheme in the borough of Telford & Wrekin.

A copy of the land and works plans and the sections and the book of reference referred to in this Order may be inspected at the offices of the Borough of Telford and Wrekin, Darby House, Lawn Central, Telford TF3 4LB.