

**2005 No. 2786**

**TRANSPORT AND WORKS, ENGLAND**

**CANALS AND INLAND WATERWAYS, ENGLAND**

**The Leicestershire County Council (Ashby de la Zouch Canal  
Extension) Order 2005**

*Made* - - - -

*7th October 2005*

*Coming into force in accordance with article 1*

Whereas an application under section 6 of the Transport and Works Act 1992<sup>(a)</sup> (“the 1992 Act”) has been made to the Secretary of State for the Environment, Food and Rural Affairs (“the Secretary of State”) by Leicestershire County Council (“the applicant”) in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2000<sup>(b)</sup>, made under sections 6, 6A, 7(3)(b) and (c) and (4), and 10 of the 1992 Act, for an Order under section 3 of the 1992 Act;

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

And whereas the Secretary of State, in accordance with section 10(4) of the 1992 Act, taking into consideration the objections made and not withdrawn and the report of the person who held the inquiry, has under section 13(1) of the 1992 Act determined to make an Order giving effect to the proposals comprised in the application with modifications which in her opinion do not make any substantial change in the proposals;

And whereas, in accordance with section 14(1)(a) and (3) of the 1992 Act, notice of her determination has been given to the applicant and every person who made an objection which was referred to the inquiry, and, in accordance with 14(1)(b) and (3) of the 1992 Act, notice of that determination was published in the London Gazette;

Now, therefore, the Secretary of State, in exercise of the powers conferred on her by sections 3 and 5 of, and paragraphs 1 to 5, 7, 8, 10 to 13, and 15 to 17 of Schedule 1 to, the 1992 Act, hereby makes the following Order—

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<sup>(a)</sup> 1992 c.42.  
<sup>(b)</sup> S.I. 2000/2190.

# PART 1

## PRELIMINARY

### Citation and commencement

1. This Order may be cited as the Leicestershire County Council (Ashby de la Zouch Canal Extension) Order 2005, and shall come into force on the day after the day on which it is made.

### Interpretation

2.—(1) In this Order—

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

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

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

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

“apparatus” has the meaning given by section 48(5) of the 1991 Act;

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

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

“the Board” means the “British Waterways Board”;

“the Board’s canal” means the Ashby de la Zouch Canal, in so far as it belongs to or is under the management or control of the Board, and includes any works, lands or premises belonging to the Board, or under its management and control, and held or used by the Board in connection with the said canal, but does not include any part of the Canal;

“the book of reference” means the book of reference required to be submitted by the undertaker (being the applicant within the meaning of the Application Rules) pursuant to rules 10(4) and 12(7) of the Application Rules(e);

“the Canal” means the Ashby de la Zouch Canal Extension, comprising the works listed in the scheduled works and all works and conveniences provided in connection therewith and any lands held or used by the undertaker for the purposes thereof, and any reference to the Canal includes any part of it, but does not include any part of the Board’s canal;

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

“the land plans” means the plans required to be submitted by the undertaker pursuant to rules 10(4) and 12(5) of the Applications Rules;

“limits of deviation”, in relation to a work, means the limits of deviation shown on the works plans in relation to that work;

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

“owner” in relation to land, means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple of land (whether in possession or reversion) or 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 scheduled works” means the works specified in Schedule 1;

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(a) 1961 c.33.

(b) 1965 c.56.

(c) 1990 c.8.

(d) 1991 c.22.

(e) As to the requirements relating to the deposit of the Order and related documents after the Order is made, see section 14(5) of the 1992 Act.

(f) 1980 c.66. See sections 1 and 328.

“the sections” means the sections required to be submitted under rules 10(3)(a) and 12(3) of the Applications Rules;

“street” includes part of a street, but does not include any towing path forming part of the Board’s canal;

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

“the transfer date”, in relation to any transfer of the Canal or any part of it in accordance with article 29, means the date on which that transfer takes effect;

“the tribunal” means the Lands Tribunal;

“the undertaker” means Leicestershire County Council;

“vessel” includes any ship, boat, barge, lighter, or raft, and any other description of craft, whether used in navigation or not;

“watercourse” includes any river, stream, ditch, drain, cut, canal, culvert, dyke, sluice, sewer and passage through which water flows, whether or not the flow is intermittent, except a public sewer or drain; and

“the works plans” means the plans required to be submitted by the undertaker pursuant to rules 10(3)(a) and 12(1) of the Applications Rules.

(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) 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 described in Schedule 1 to this Order;

(4) References in this Order to points identified by letters, with or without numbers, shall be construed as references to the points so lettered on the land plans or works plans.

(5) All distances, cardinal points of the compass, heights above ordnance datum, levels, lengths and points stated in any description of the works or powers or lands contained in Schedules 1, 5 and 6 to this Order or shown on the land plans or sections or work plans shall be construed as if the words “or thereabouts” were inserted after each such distance, direction, height, length and point, and distances between points on a waterway shall be taken to be measured along the centre line of the channel of the waterway.

## PART 2

### WORKS PROVISION

#### **Power to construct works**

3.—(1) The undertaker may construct and maintain the scheduled works.

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

(3) Subject to paragraph (5), the undertaker may carry out and maintain such of the following works as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works, namely—

- (a) works to alter the position of apparatus, including mains, sewers, drains and cables;
- (b) works to alter the course of, or otherwise interfere with, a watercourse other than a navigable watercourse;
- (c) works to connect the Canal to the Board’s canal;
- (d) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the scheduled works;
- (e) works for the benefit or protection of premises affected by the scheduled works; and
- (f) works for the strengthening, alteration, or demolition of any building or structure.

(4) Subject to paragraph (5), the undertaker may carry out such other works (of whatever nature) as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works, other than works that would interfere with a navigable watercourse.

(5) Paragraphs (3) and (4) shall only authorise the carrying out or maintenance of works outside the limits of deviation if such works are carried out on land specified in Schedule 3 and subject to—

- (a) the giving of 14 days' notice to owners and occupiers, or in the case of an emergency, as much notice as possible;
- (b) restoring the condition of the land to that before the occupation; and
- (c) paying compensation for loss of use of the land.

#### **Power to deviate**

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

- (a) deviate laterally from the lines or situations shown on the work plans within the limits of deviation; and
- (b) deviate vertically from the levels shown on the sections—
  - (i) to any extent not exceeding 1 metre upwards; and
  - (ii) to any extent not exceeding 1 metre downwards.

#### **Power to execute street works**

5. The undertaker may, for the purposes of the authorised works, enter upon the streets specified in Schedule 4 and may—

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

#### **Stopping up of streets**

6.—(1) Subject to the provisions of this article, for the purpose of carrying out and operating the scheduled works, the undertaker may, in connection with the construction of the authorised works, stop up any street specified in Schedule 5, to the extent specified in relation to that street in that Schedule.

(2) No street specified in columns (1) and (2) of Schedule 5 (being a street to be stopped up for which a substitute is to be provided by way of a diversion) shall be wholly or partly stopped up under this article until the new street to be substituted for it, which is described as a diversion in column (4) of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use.

(3) Where a street has been stopped up under this article, all rights of way over or along the street so stopped up shall be extinguished.

#### **Temporary stopping up of streets**

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

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

(2) The undertaker shall provide reasonable access for pedestrians going to or from premises abutting a street affected by the exercise of the powers conferred by this article if their exercise would otherwise prevent such access.

(3) Without prejudice to the generality of paragraph (1), the undertaker may exercise the powers conferred by this article in relation to any street specified in columns (1) and (2) of Schedule 6 to the extent and for the purpose specified in relation to that street in column (3) of that Schedule.

(4) The undertaker shall not—

- (a) exercise the powers specified in paragraph (3) without first consulting the street authority; and
- (b) exercise the other powers conferred by this article without the consent of the street authority.

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

(6) This article is subject to paragraph 2 of Schedule 2 (provisions relating to the apparatus of statutory undertakers etc.).

### **Access to works**

**8.**—(1) The undertaker may, within the limits of deviation, provide means of access or improve existing means of access to the scheduled works.

(2) Any works providing or improving any means of access referred to in paragraph (1) shall not be commenced until they have been approved by the highway authority.

### **Application of the 1991 Act**

**9.**—(1) Works executed under this Order in relation to a highway which consists of or includes a carriageway shall be treated for the purposes of Part III of the 1991 Act (street works) as major highway works if they fall within any description of major highway works specified in paragraphs (a), (c) to (e), (g) or (h) of section 86(3) of that Act.

(2) In the provisions of the 1991 Act applied by paragraph (3), any reference to street works shall be construed as meaning the temporary or permanent stopping up, alteration or diversion of a street by the undertaker, whether or not the stopping up, alteration or diversion constitutes “street works” as defined by section 48(3) of that Act, or works in relation to which a right to execute works exists by virtue of section 105 (2) or (3) of that Act.

(3) The following provisions of the 1991 Act shall apply to works executed under this Order in a highway—

- section 54 (advance notice of certain works);
- section 55 (notice of starting date of works);
- section 57 (notice of emergency works);
- section 59 (general duty of street authority to co-ordinate works);
- section 60 (general duty of undertakers to co-operate);
- section 68 (facilities to be afforded to street authority);
- section 69 (works likely to affect other apparatus in the street);
- section 76 (liability for cost of temporary traffic regulation); and
- section 77 (liability for cost of use of alternative route).

### **Maintenance of new or altered streets**

**10.**—(1) From the date on which the street authority confirms that the alteration or diversion of a street or part thereof under this Order has been completed to its reasonable satisfaction, that street or part thereof shall be maintained—

- (a) for a period of 24 months, by the undertaker;
- (b) after a period of 24 months, by the street authority.

(2) Paragraph (1) shall not apply—

- (a) where the undertaker and the street authority enter into an agreement as to the maintenance of the street under article 12;
- (b) to the maintenance of the structure of any bridge carrying a street over the Canal; or
- (c) to the maintenance of the structure of any aqueduct over a street.

(3) The undertaker shall not be held to be a street authority for the purposes of Part III of the 1991 Act by reason of a duty under this article to maintain a street.

### **Construction of bridges and aqueducts**

**11.** Where a bridge carrying a street over the Canal or an aqueduct carrying the Canal over a street is to be constructed under this Order—

- (a) the undertaker shall submit all necessary plans, drawings and specifications for approval by the highway authority;
- (b) the undertaker shall obtain the highway authority's approval to all such plans, drawings and specifications before the commencement of the works; and
- (c) the bridge or aqueduct shall be constructed in accordance with the approved plans, drawings and specifications.

### **Agreements with street authorities**

**12.—**(1) A street authority and the undertaker may enter into agreements between themselves with respect to—

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

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

- (a) make provision for the street authority to carry out any function which is conferred on the undertaker under this Order and which relates to the street in question; and
- (b) contain such terms as to payment and otherwise as the parties consider appropriate.

### **Discharge of water**

**13.—**(1) Subject to the conditions set out in paragraphs (2), (4), (5) and (6), the undertaker may—

- (a) use any watercourse or any public sewer or drain for the drainage of water in connection with the construction, maintenance or operation of the authorised works;
- (b) for the purposes of sub-paragraph (a), lay down, take up and alter pipes; and
- (c) make openings into, and connections with, the watercourse, sewer or drain.

(2) The undertaker shall not discharge any water into any watercourse, public sewer or drain except with the consent of the relevant authority.

(3) The consent referred to in paragraph (2) may be given subject to such terms and conditions as the relevant authority may reasonably impose.

(4) When making an opening into any public sewer or drain in accordance with paragraph (1)(c) of this article, the undertaker shall—

- (a) prepare plans for the approval of the relevant authority; and

(b) act in accordance with any such plans approved.

(5) The undertaker 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, except for the purposes of carrying out any of Works No. 2A to 2K or Work No. 4 in accordance with the requirements of section 109 of the Water Resources Act 1991<sup>(a)</sup>.

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

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

(8) In this article—

“public sewer or drain” means a sewer or drain which belongs to or is administered by a sewerage undertaker, the Environment Agency, or a local authority;

“relevant authority” means the local authority, statutory undertaker, or other body responsible for the maintenance of the watercourse, public sewer or drain; and

other expressions used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

#### **Power to abstract groundwater**

**14.**—(1) Subject to paragraphs (2) and (3), the undertaker may construct boreholes and wells and install such pumps and equipment as are required to provide a viable water supply suitable for the Canal and to supply sufficient water to the Canal for the needs of navigation.

(2) Nothing in paragraph (1) shall authorise the carrying out of any works, or the abstraction or discharge of water, except in accordance with the appropriate licence or consent granted by the Environment Agency.

(3) The undertaker may construct boreholes or wells only on land which is shown on the land plans or described in the book of reference.

#### **Power to survey and investigate land**

**15.**—(1) The undertaker may for the purposes of this Order and subject to subparagraph (2)—

- (a) survey or investigate any land which may be affected by the authorised works;
- (b) make trial holes on the land in such positions as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) place on, leave on or remove from the land apparatus for use in connection with the survey or investigation of the land or making of trial holes; and
- (d) enter on the land for the purpose of exercising any of the powers conferred by subparagraphs (a) to (c) above.

(2) Before exercising any of the powers conferred by subparagraph (1), the undertaker shall—

- (a) serve on every owner and occupier of the land a notice giving at least 7 days’ notice of the proposal to exercise that power; and
- (b) obtain the consent of the street authority in respect of trial holes to be made in any carriageway or footway.

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

- (a) shall, if so required before or after entering the land, produce written evidence of his authority to do so; and

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<sup>(a)</sup> 1991 c.57.



(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) The undertaker shall compensate the owners and occupiers of the land for any damage occasioned by the exercise of the powers conferred by this article.

(5) In the case of dispute, the compensation referred to in sub-paragraph (4) shall be determined under Part I of the 1961 Act.

## PART 3

### ACQUISITION AND POSSESSION OF LAND

#### Power to acquire land

**16.**—(1) For the purposes of the authorised works, the undertaker may acquire by compulsory purchase any land which is—

- (a) shown on the land plans; and
- (b) the extent, description and situation of which is specified in column two of the book of reference.

(2) This article is subject to article 19 (9).

#### Application of Part 1 of the Compulsory Purchase Act 1965

**17.**—(1) Part I of the 1965 Act, as modified by the provisions of this Order, shall apply to the acquisition of land under this Order as if—

- (a) it were a compulsory purchase to which Part 2 of, or Schedule 1 to, the Acquisition of Land Act 1981(a) applied; and
- (b) this Order were a compulsory purchase order under that Act.

(2) Part I of the 1965 Act, as so applied, shall have effect for the purposes of this Order as if—

- (a) section 4 (which provides a time limit for compulsory purchase of land) and paragraph 3(3) of Schedule 3 (which contains a provision for two sufficient sureties where a bond is given) were omitted; and
- (b) in section 11(1), for the words “not less than fourteen days notice” there were substituted—

“(a) in a case where the notice to treat relates only to the acquisition of subsoil or the acquisition of an easement or other right over the land, not less than one month’s notice; and

(b) in any other case, not less than three months’ notice.”.

#### Powers to acquire new rights

**18.**—(1) If, for the purposes of the authorised works, the undertaker requires easements or rights over any land referred to in article 16(1) it may—

- (a) acquire them by compulsory purchase; or
- (b) create them.

(2) Where the undertaker acquires a right over land under paragraph (1) it shall not be required to acquire a greater interest in the land.

(3) Paragraph (2) is subject to section 8 of the 1965 Act, as substituted by paragraph 4 of Schedule 7.

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(a) 1981 c.67.



(4) Where an easement or other right over land is created under paragraph (1)(b), Schedule 7 shall have effect for the purpose of modifying enactments relating to compensation and the provisions of the 1965 Act in their application to the compulsory acquisition of that easement or other right.

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

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

- (a) enter upon and take temporary possession of the land specified in columns (1) and (2) of Schedule 8 for the purpose specified in column (3) of that Schedule;
- (b) remove any buildings and vegetation from that land; and
- (c) construct temporary works on that land including—
  - (i) the provision of means of access; and
  - (ii) buildings.

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

(3) The undertaker shall not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the work or works specified in relation to that land in column (4) of Schedule 8.

(4) Subject to paragraph (5), before giving up possession of land under paragraph (3), the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of any owner or occupier of the land.

(5) Paragraph (4) shall not be taken to require the undertaker to replace a building removed under paragraph (1)(b).

(6) The undertaker shall pay compensation to the owners and occupiers of land for any loss or damage incurred by them as a consequence of the exercise of the powers conferred by this article.

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

(8) Without prejudice to article 35, nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works.

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

(10) Paragraph (9) shall not apply in relation to rights created under article 18.

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

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

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

**20.** For the purposes of assessing the compensation payable to any person on the acquisition from that person of any land, interest or right under this Order, if the tribunal is satisfied that—

- (a) the creation of an interest;
- (b) the erection of a building;
- (c) works executed; or
- (d) any improvement or alteration made,

was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation, it shall disregard that interest, building, improvement or alteration, or those works, as the case may be.

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

**21.**—(1) This article shall apply instead of section 8(1) of the 1965 Act in any case where—

- (a) a notice to treat is served under the 1965 Act on the owner in respect of a part only (“the notified part”) of any land occupied or managed as a single unit (“the relevant unit of land”); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the notified part and stating that he is willing and able to sell the whole of the relevant unit of land.

(3) If no such counter-notice is served within that period, the owner shall be required to sell the notified part.

(4) If such a counter-notice is served within that period, the question whether the owner shall be required to sell only the notified part shall, unless the undertaker agrees to take the land specified in the counter-notice, be referred to the tribunal.

(5) If on a reference under paragraph (4), the tribunal determine that the notified part can be taken—

- (a) without material detriment to the remainder of the relevant unit of land, and
- (b) where the relevant unit of land comprises a house with a park or garden, without seriously affecting the amenity or convenience of the house,

the owner shall be required to sell the notified part.

(6) If on a reference under paragraph (4), the tribunal determine that only part of the notified part can be taken—

- (a) without material detriment to the remainder of the land; and
- (b) where the land comprises a house with a park or garden, 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 a reference under paragraph (4), the tribunal determine that—

- (a) the notified part cannot be taken without material detriment to the remainder of the relevant unit of land; but
- (b) the material detriment is confined to only a part of the relevant unit of land, being a part specified in the counter-notice but not the notified part,

the notice to treat shall be deemed to be a notice to treat for that part of the relevant unit of land to which the material detriment is confined, in addition to the notified part, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker agrees to take the land specified in the counter-notice, or if the tribunal determine that—

- (a) none of the notified part can be taken without material detriment to the remainder of the relevant unit of land or, where the relevant unit of land comprises a house with a park or garden, without seriously affecting the amenity or convenience of the house; and
- (b) the material detriment is not confined to only a part of the notified part,

the notice to treat shall be deemed to be a notice to treat for the whole of the relevant unit of land whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.

(9) In any case where, by virtue of a determination by the tribunal under this article, a notice to treat is deemed to be a notice to treat for less land or more land than the notified part, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat, and if it does so shall pay the owner compensation for any expense or other loss occasioned to him by the giving and withdrawal of the notice.

(10) In the case of a dispute under paragraph (9), the amount of compensation shall be determined by the tribunal.

(11) Where the owner is required under this article to sell only part of the relevant unit of land, the undertaker shall pay him compensation for any loss sustained by him due to the severance of that part in addition to the value of the interest acquired.

(12) In this article—

“the 1965 Act” means the 1965 Act as applied by article 17 of this Order; and

“owner” includes any lessee.

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

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

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

whichever is the sooner.

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

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

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

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

**23.**—(1) The powers conferred by this Order to acquire land or rights over land compulsorily, and the power conferred by article 19 to enter upon and take temporary possession of land, shall cease to be exercisable at the end of the period of 5 years beginning on the day on which this Order comes into force.

(2) Paragraph (1) shall not prevent the undertaker remaining in possession of land in accordance with article 19 after the end of that period, if the land was entered and possession of it was taken before the end of that period.

## **PART 4**

### **REGULATION AND MANAGEMENT OF THE CANAL**

#### **Power to make byelaws**

**24.**—(1) The undertaker may make byelaws regulating the use and operation of the Canal, the maintenance of order on the Canal and on the undertaker’s property or other facilities provided in connection with the use of the Canal, the conduct of all persons while on the Canal and for preventing damage to the Canal.

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

- (a) contain provisions—
- (i) for prohibiting or restricting the use of the Canal either generally or in any manner specified in the byelaws by traffic of any description so specified;
  - (ii) with respect to interference with, or obstruction of, the operation of the Canal or other facilities provided in connection with the Canal;
  - (iii) which make different provisions for different parts of the Canal;
  - (iv) for regulating the operation of the Canal;
  - (v) for regulating the movement (including the speed) and use of vessels using the Canal;
  - (vi) for regulating or prohibiting the mooring of vessels in the Canal;
  - (vii) for authorising the registration of vessels using the Canal including making reasonable charges for such registration; and
  - (viii) to exclude any person from the Canal.

(b) may make different provisions for different parts of the Canal.

(3) Byelaws made under this article may provide for it to be an offence for a person to contravene, or fail to comply with, a provision of the byelaws and for such a person to be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) If the contravention of or failure to comply with any byelaw made under paragraph (3) is attended with danger or annoyance to the public, or hindrance to the undertaker in the operation of the Canal, the undertaker may summarily take action to obviate or remove the danger, annoyance or hindrance.

(5) Action taken under paragraph (4) shall not prevent the undertaker from taking proceedings for an offence.

(6) No byelaw made by the undertaker under this article shall have effect until confirmed by the Secretary of State.

(7) At least 28 days before applying for any byelaws to be confirmed under paragraph (6), the undertaker shall publish in such manner as may be approved by the Secretary of State a notice of its intention to apply for the byelaws to be confirmed and of the place at which and the time during which a copy of the byelaws will be open to public inspection, and any person affected by any of the byelaws may make representations on them to the Secretary of State within a period specified in the notice, being a period of not less than 28 days from the publication of the notice.

(8) For at least 24 days before an application is made for byelaws to be confirmed under paragraph (6), a copy of the byelaws shall be kept at the principal office of the undertaker and shall at all reasonable hours be open to public inspection without payment.

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

(10) The Secretary of State may refuse to confirm any byelaw submitted to her by the undertaker for confirmation under this article, or may confirm the byelaw either without or, if the undertaker consents, with modifications.

(11) The Secretary of State may fix the date on which any byelaw confirmed under this article is to come into force.

(12) If no date is so fixed, the byelaw shall come into force at the end of the period of 28 days beginning with the date of confirmation.

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

(14) A copy of the byelaws when confirmed shall be printed and deposited at the principal office of the undertaker and shall at all reasonable hours be open to public inspection without

payment, and the undertaker shall, at the request of any person, supply him with a copy of any such byelaws on payment of such reasonable sum as the undertaker shall determine.

(15) The production of a printed copy of byelaws confirmed under paragraph (6), on which is endorsed a certificate purporting to be signed by a person duly authorised by the undertaker stating—

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

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

### **Operational powers**

**25.**—(1) Subject to the provisions of this Order, the undertaker may manage the Canal and make charges for its use.

(2) Without prejudice to the generality of paragraph (1), the undertaker may—

- (a) control the level of water in and the flow of water into, along or from the Canal;
- (b) open or close any lock gate or other structures belonging to the Canal; or
- (c) take such steps from time to time as may be considered necessary for the development, improvement, regulation, maintenance or management of the Canal and the facilities afforded by the Canal or in connection with it.

(3) Nothing in this Order shall confer any public or private right of navigation over the Canal, or impose any duty on the undertaker to maintain the Canal for the purpose of navigation, or to supply, or maintain a supply of water for the Canal for that purpose.

### **Limit of jurisdiction**

**26.** The boundary between the jurisdiction of the undertaker in respect of the Canal and the jurisdiction of the Board in respect of the Board's canal shall be a straight line drawn between national grid references 434610E 309982N and 434626E 309970N across the Board's canal 35 metres north of the Board's winding hole, being the existing limit of the Board's canal.

### **Application of existing enactments**

**27.**—(1) In this article “the original canal” means such part of any canal or former canal as is situated within the limits of deviation in relation to any of the scheduled works, and all works or conveniences connected with any such part, and any lands held for the purpose of such part, but does not include any operational part of the Board's canal, or any works and conveniences connected therewith, or any lands held or used by the Board for the purpose of the operational part of the Board's canal.

(2) Any enactment by which the original canal was authorised shall, as from the date on which this Order comes into force, have effect subject to the provisions of this Order.

(3) Except as may be otherwise provided in this Order, as from the date on which this Order comes into force the undertaker shall, in substitution for the Board, be entitled to the benefit of, and to exercise, all rights, powers and privileges and be subject to all obligations relating to the original canal as are provided in the Act made on 9<sup>th</sup> May 1794 for making and maintaining a Navigable Canal from the Coventry Canal<sup>(a)</sup> (in so far as the same are still subsisting and capable of taking effect).

(4) Paragraph (3) shall be subject to any agreement between the undertaker and the Board under article 28 or article 29.

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<sup>(a)</sup> C.A.P. XCIII. Anno Tricesimo Quarto Georgii III Regis.

### **Agreements with British Waterways**

28.—(1) The undertaker and the Board may enter into and carry into effect agreements with respect to the construction, maintenance, use and operation of the authorised works, or any part of those works, by the Board or by the undertaker, or by the undertaker and the Board jointly.

(2) Any agreement made under paragraph (1) may make provision with respect to any other matters incidental or subsidiary thereto or consequential thereon, including the defraying of, or the making of contributions towards, costs incurred by either party to the agreement.

(3) Without prejudice to the generality of paragraph (1), any such agreement may provide for the exercise by the Board, or by the undertaker and the Board jointly, of all or any of the powers of the undertaker with respect to any of the authorised works.

(4) The exercise by the Board, or by the undertaker and the Board jointly, under this article, of any powers with respect to the authorised works, or any part of any of those works, shall be subject to the same provisions in relation to those powers as would apply if those powers were exercised by the undertaker alone.

### **Transfer of the Canal**

29.—(1) Except with the consent of the Secretary of State, the undertaker shall not transfer or vest the Canal or any part of it in any person other than the Board.

(2) Except as may be otherwise provided for in this Order or in any agreement under this article, as from the date on which any transfer of the Canal or any part of it by the undertaker comes into force, the transferee shall, in substitution for the undertaker, be entitled to the benefit of, and to exercise, all rights and powers and be subject to all obligations, statutory or otherwise, relating to the transferred Canal (in so far as the same are still subsisting and capable of taking effect).

(3) Where the Canal is transferred to the Board under this article, as from the transfer date—

(a) the transferred Canal shall be deemed for the purposes of any enactment to be (as the case may require) an inland waterway owned or managed by the Board or comprised in the undertaking of the Board or a canal or inland navigation belonging to or under the control of the Board; and

(b) any byelaws made under article 24 shall cease to apply to the transferred Canal.

(4) The transitional provisions of Schedule 9 shall have effect in relation to any transfer in accordance with this article, being a transfer to the Board.

(5) In this article—

“the transferee” means the Board or any other person to whom the undertaking or any part thereof is transferred under this article; and

“the transferred Canal” means so much of the Canal as is transferred in accordance with this article.

## **PART 5**

### **MISCELLANEOUS AND GENERAL**

#### **Disclosure of confidential information**

30. A person who—

(a) enters land in pursuance of the provisions of article 15; and

(b) discloses to any person any information so 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.



### **Statutory undertakers, etc.**

31. The provisions of Schedule 2 shall have effect.

### **Protection of the Environment Agency**

32. The provisions of Schedule 10 shall have effect.

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

33.—(1) The undertaker shall, as soon as practicable after the making of this Order, submit at least two copies of the certified book of reference, the sections, the land plans and the works plans to the Secretary of State for certification that they are true copies of, respectively, the book of reference, sections and plans referred to in this Order.

(2) Where the book of reference or any land plan, works plan or section has been revised before this Order is made, the copy of the book of reference, plan or section submitted for certification under paragraph (1) shall be a copy of the book of reference, plan or section deposited in the office of the Clerk of the Parliaments in accordance with section 14(5)(b) of the 1992 Act.

(3) A copy document so certified shall be admissible in any proceedings as evidence of the contents of the documents of which it is a copy.

### **Service of notices**

34.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served by post.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or director of the body or, in the case of a local authority, a proper officer of that authority.

(3) For the purpose of section 7 of the Interpretation Act 1978(a), the proper address of any person for the purposes of the service on him of a notice or document under paragraph (1) above is, if he has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or a proper officer 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 last known address at the time of service 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 and describing that land in the notice; 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.

### **Exclusion of double recovery**

35. Compensation shall not be payable in respect of the same matter both under this Order and under any other enactment, any contract, or any rule of law.

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(a) 1978 c.30.



## Arbitration

36. Any difference as to the application of 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.

## Consent and approvals

37. Where the consent or approval of any body to any works, plans, specifications or other matter is required under this Order, that consent or approval shall not be unreasonably withheld.

*Jim Knight*

Parliamentary Under Secretary of State

Department for Environment, Food and Rural Affairs

7th October 2005

## SCHEDULE 1

Article 2(1) and (3)

### SCHEDULED WORKS

Work No. 1	An end-on connection between the Canal and the Board's canal at Snarestone including a length of canal, stop lock and bywash. The length of the work is 70 metres commencing at grid reference point 434615E, 309970N, and terminating at 434656E, 310026N.
Work No. 2A	A canal 497 metres in length commencing at the northern end of Work No. 1, grid reference point 434656E, 310026N, and terminating at Work No.3; an accommodation bridge at grid reference point 434775E, 310492N.
Work No. 2B	A canal 586 metres in length commencing at Work No. 3; an accommodation bridge, at grid reference point 434770E, 310490N, and terminating at Work No. 4; an aqueduct over the Gilwiskaw Brook, at grid reference point 434926E, 311029N.
Work No. 2C	A canal 713 metres in length commencing at Work No. 4; an aqueduct over the Gilwiskaw Brook, at grid reference point 434875E, 311117N, and terminating at Work No. 5; a highway bridge carrying B4116, Gallows Lane, at grid reference point 434356E, 311591N.
Work No. 2D	A canal 230 metres in length commencing at Work No. 5; a highway bridge carrying B4116, Gallows Lane, commencing at grid reference point 434294E, 311623N, and terminating at Work No. 6; a footbridge, at grid reference point 434084E, 311612N.
Work No. 2E	A canal 202 metres in length including a basin of area 0.56 hectares commencing at Work No. 6; a footbridge, at grid reference point 434080E, 311612N, and terminating at Work No. 7; a footbridge, at grid reference point 433959E and 311452N.
Work No. 2F	A canal 656 metres in length commencing at Work No. 7; a footbridge, at grid reference point 433956E, 311446N, and terminating at Work No. 8, Horses Lane Bridge, at grid reference point 433555E, 311579N.
Work No. 2G	A canal 291 metres in length commencing at Work No. 8, Horses Lane Bridge, grid reference point 433558E, 311569N, and terminating at Work No. 9; an accommodation bridge, at grid reference point 433296E, 311852N.
Work No. 2H	A canal 81 metres in length commencing at Work No. 9; an accommodation bridge, commencing at grid reference point 433288E, 311859N, and terminating at Work No. 10; an aqueduct over High Street, Measham, at grid reference point 433224E, 311908N.

Work No. 2J	A canal 771 metres in length commencing at Work No. 10; an aqueduct over High Street, Measham, commencing at grid reference point 433143E, 311966N, and terminating at Work No. 11; a footbridge, at grid reference point 433196E, 312201N.
Work No. 2K	A canal 141 metres in length commencing at Work No. 11; a footbridge, commencing at grid reference point 433199E, 312196N, and terminating approximately 40m west of High Street, Measham, at grid reference point 433302E, 312100N.
Work No. 3	An accommodation bridge at grid reference point 434775E, 310492N.
Work No. 4	An aqueduct 102 metres in length to carry the canal over Gilwiskaw Brook commencing at grid reference point 434926E, 311029N, and terminating at grid reference point 434875E, 311117N.
Work No. 5	A new highway bridge 70 metres in length to carry B 4116, Gallows Lane, over the canal south of its junction with Bosworth Road, commencing at grid reference point 434356E, 311591N, and terminating at grid reference point 434356E, 311591N.
Work No. 6	A new footbridge 6 metres in length over the Canal between Measham Lodge Farm and Bosworth Road, to accommodate footpath P90 grid reference point 434084E, 311616N.
Work No. 7	A new accommodation bridge 10 metres in length over the Canal 250m north west of Measham Lodge Farm, also serving footpath P85, at grid reference point 433959E, 311452N.
Work No. 8	Alteration to the area of the existing three-arched Horses Lane Bridge at grid reference point 433558E, 311579N (arch 1 – raise ground level, arch 2 – construct central channel, arch 3 – excavate ground level to construct a towpath). The bridge is currently 90 metres in length and carries footpath P86.
Work No. 9	New accommodation bridge 10 metres in length over the Canal, at grid reference point 433296E, 311852N.
Work No. 10	An aqueduct 100 metres in length over High Street, Measham, at grid reference point 433224E, 311908N.
Work No. 11	A footbridge 6 metres in length over the Canal, at grid reference point 433196E, 312201N.
Work No. 12	Access track 190 metres in length off Bosworth Road, at grid reference point 434146E, 311689N.

## SCHEDULE 2

Articles 7(6) and 31

### PROVISIONS RELATING TO STATUTORY UNDERTAKERS ETC

- 1.—(1) Subject to the following provisions of this paragraph—
- (a) sections 271 to 274 of the 1990 Act (Extinguishment of rights of statutory undertakers, etc.) shall apply in relation to any land acquired or appropriated by the undertaker under this Order;
  - (b) all such other provisions of the 1990 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; and
  - (c) for the purposes of this Order, any references to the appropriate Minister contained in the sections of the 1990 Act which are referred to in sub-paragraphs (a) and (b) above, shall have effect as references to the Secretary of State.

(2) Where any apparatus of public utility undertakers or of a public communications provider is removed in pursuance of a notice or order given or made under section 271, 272 or 273 of the 1990 Act for the purposes of this Order, the undertaker shall compensate any person who is the owner or occupier of premises supplied by that apparatus for expenditure reasonably incurred in connecting the premises to any other apparatus from which a similar supply can be received.

(3) Where a public sewer is removed in pursuance of a notice or order given or made for the purposes of this Order, under section 271, 272 or 273 of the 1990 Act, sub-paragraph (2) shall not apply, but the undertaker shall compensate 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,

for expenditure reasonably incurred by him in causing his drain or sewer to communicate with any other public sewer or with a private sewage disposal plant.

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

(5) In this paragraph—

“public communications provider” has the meaning given by section 151(1) of the Communications Act 2003(a); and

“public utility undertakers” has the meaning given by section 329(1) of the Highways Act 1980.

2.—(1) Except as provided by this paragraph, where a street is stopped up or services diverted under the provisions of this Order, any statutory undertaker whose apparatus is placed under, in, upon, over, along or across the street, shall have the same powers and rights in respect of that apparatus as if this Order had not been made.

(2) Where, under the provisions of this Order, a street is stopped up or services diverted, any statutory undertaker whose apparatus is placed under, in, upon, over, along or across the street may remove the apparatus and place it, or other apparatus provided in substitution for it, in such other position as the statutory undertaker may reasonably determine and have power to place it;

(3) If reasonably requested to do so by the undertaker, the statutory undertaker shall remove his apparatus and provide other apparatus in substitution for it.

(4) Subject to the following provisions of this paragraph, the undertaker shall pay to any statutory undertaker an amount equal to the cost reasonably incurred by the statutory undertaker 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.

(5) If in the course of the execution of relocation works under sub-paragraph (2) or (3)—

- (a) apparatus of better type, greater capacity or greater dimensions is placed in substitution for existing apparatus; or
- (b) existing apparatus or apparatus which has been substituted for it is placed at a greater depth;

the provisions of paragraph (6) shall apply.

(6) Unless the substitutions referred to in sub-paragraph (5) above have been agreed to by the undertaker or determined to be necessary by arbitration, any costs incurred by the undertaker in consequence of the substitutions shall be deducted from the amount due to the statutory undertaker under sub-paragraph (4) above.

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(a) 2003 c. 21.

- (7) For the purposes of sub-paragraph (5)—
- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as placing apparatus of greater dimensions in substitution for existing apparatus; and
  - (b) where the provision of a joint in a cable is agreed, or is determined by arbitration to be necessary, the consequential provision of a joining chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.
- (8) Where under sub-paragraph (2) or (3) original apparatus is replaced by substituted apparatus and the original apparatus was put in place more than seven years and six months before the substitution was made, any amount due under sub-paragraph (4) above shall be reduced by the amount which represents the financial benefit of the substitution to the statutory undertaker.
- (9) For the purposes of sub-paragraph (8)—
- (a) the original apparatus shall be regarded as put in place on the day after the works to put it in place were completed;
  - (b) the substitution shall be regarded as made on the day after the works to put the substituted apparatus in place are completed;
  - (c) regulation 7 of the Street Works (Sharing of Costs of Works) (England) Regulations 2000<sup>(a)</sup> and the Code of Practice referred to in that regulation shall apply for the purpose of determining the amount of the financial benefit of the substitution to the statutory undertaker;
  - (d) “original apparatus” means the apparatus which is replaced by other apparatus; and
  - (e) “substituted apparatus” means the apparatus which replaces the original apparatus.
- (10) Sub-paragraphs (4) to (9) shall not apply where the authorised works constitute major transport works as defined by section 91(2) of the 1991 Act, and—
- (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 the Street Works (Sharing of Costs of Works) (England) Regulations 2000; and
  - (b) the allowable costs shall be borne by the undertaker and the statutory undertaker in such proportions as may be prescribed by those regulations.
- (11) In this paragraph—
- “relocation works” means works executed, or apparatus provided, under sub-paragraph (2) or (3); and
- “statutory undertaker” means a statutory undertaker within the meaning given by section 329(1) of the Highways Act 1980 or a public communications provider as defined by section 151(1) of the Communications Act 2003.

## SCHEDULE 3

Article 3(5)

### LAND ON WHICH WORKS OUTSIDE THE LIMITS OF DEVIATION MAY BE CARRIED OUT

<i>(1) Area</i>	<i>(2) Number of plot shown on land plan</i>
Parish of Snarestone	6a
Parish of Snarestone	7a
Parish of Measham	8a
Parish of Measham	10a
Parish of Measham	31a

<sup>(a)</sup> S.I. 2000/3314.

Parish of Measham	22a
Parish of Measham	23a
Parish of Measham	24a

## SCHEDULE 4

Article 5

### STREETS SUBJECT TO STREET WORKS

<i>(1) Area</i>	<i>(2) Street subject to street works</i>	<i>(3) Reference on the Works Plan</i>
Parish of Measham	Gallows Lane (B4116)	X-X1
Parish of Measham	High Street, Measham	Z-Z1

## SCHEDULE 5

Article 6(1) and (2)

### STREETS TO BE PERMANENTLY STOPPED UP

<i>(1) Area</i>	<i>(2) Street to be stopped up</i>	<i>(3) Extent of stopping up</i>	<i>(4) Diversion required</i>
Parish of Measham	Footpath P90	F – G on works plan	Diversion via point H on works plan to accommodate Work No. 6.
Parish of Measham	Footpath P87	N – M on works plan	Diversion shown on works plan to accommodate Work No. 2F
Parish of Measham	Footpath P85	J – K on works plan	Diversion via point L on the works plan to accommodate Work No. 7
Parish of Measham	Footpath P85	P – Q on works plan	Diversion as shown on works plan to accommodate Work No. 2K

## SCHEDULE 6

Article 7(3)

### STREETS TO BE TEMPORARILY STOPPED UP

<i>(1) Area</i>	<i>(2) Street to be stopped up</i>	<i>(3) Extent of Temporary stopping up</i>
Parish of Measham	B4116, Gallows Lane	South of the junction of Gallows Lane and Bosworth Road, between point X-X1 and Y-Y1 on the Works Plan to carry out Work No. 5.
Parish of Measham	High Street, Measham	Between point Z-Z1 on the Works Plan to carry out Work No. 10.

Parish of Snarestone	Footpath P85	Between points A and B on the Works Plan to carry out Work No. 2A, Work No. 2B, Work No. 3 and Work No. 4.
Parish of Measham	Footpath P85	Between points C and D on the Works Plan, to carry out Work No. 2C and Work No. 4.
Parish of Snarestone	Footpath Q31	Point E to E1 on the Works Plan, to carry out Work No. 3.
Parish of Measham	Footpath P90	Between points F and G on the Works Plan, to carry out Work No. 8.
Parish of Measham	Footpath P87	Between points N and M on the Works Plan, to carry out Work No. 2F.
Parish of Measham	Footpath P85	Between points J and K on the Works Plan, to carry out Work No. 7.

## SCHEDULE 7

Article 18(3) and (4)

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

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land shall apply to a compulsory acquisition under this Order of an easement or other right created under article 18(1) with the modifications specified in paragraphs 2 to 5.

2.—(1) For the purposes of this Order, the Land Compensation Act 1973(a) shall have effect subject to the modifications set out in sub-paragraph (2).

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

- (a) for the words “Where land is acquired or taken” there shall be substituted the words “Where 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)(b) (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 4—

- (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 proposed” there shall be substituted the words “right is proposed”.

(a) 1973 c.26.

(b) Section 58(1) was amended by the Compulsory Purchase (Vesting Declarations) Act 1981 (c.66) and by section 4 of and Schedule 2, paragraph 29(10) to the Planning (Consequential Provisions) Act 1990 (c.11).



3.—(1) Subject to the following provisions of this Schedule, the 1965 Act shall apply to the compulsory acquisition under this Order of a right created under article 18(1) of this Order, so that, in appropriate contexts, references in that Act to land, or to land subject to compulsory purchase, 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), for the purposes of this Order, Part 1 of the 1965 Act shall apply in relation to the compulsory acquisition under this Order of a right created under article 18(1) with the modifications specified in the following provisions of this Schedule.

4.—(1) For section 8 of the 1965 Act (provisions as to divided land) there shall be substituted the following—

“8.—(1) Where, in consequence of the service on a person under section 5 of this Act (a) 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 tribunal, and
- (b) before the tribunal has determined that question that 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 Leicestershire County Council (Ashby de la Zouch Canal Extension) 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)(b) 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.

(4) Nothing in subsection (3) prejudices any other power of the authority to withdraw the notice.

5. Section 11(b) (powers of entry), section 12(c) (unauthorised entry) and section 13 (refusal to give possession to acquiring authority) of the 1965 Act shall apply so that, as from the date on which the undertaker has served notice to treat under this Order in respect of any right, it has the power to exercise that right (which shall be deemed for this purpose to have been created on the date of service of the notice), subject to the conditions contained in the 1965 Act.

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(a) Section 5(2A) – 2(e) were inserted by section 67 of the Planning and Compensation Act 1991 (c.34).

(b) Section 11 was amended by the Acquisition of Land Act 1981, section 34(1) and Schedule 4 and the Housing (Consequential Provisions) Act 1985 (c.71), section 3, and Schedule 1.

(c) Section 12 was amended by the Courts Act 1971 (c.23), section 56(2) and Schedule 9.



## SCHEDULE 8

Article 19(1)(a) and (3)

### LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1) Area</i>	<i>(2) Number of plot shown on land plan</i>	<i>(3) Purpose for which temporary possession may be taken</i>	<i>(4) Authorised work as shown on the Works Plan</i>
Parish of Snarestone	3a	Access track and site working space	Work No. 2A
Parish of Snarestone	4a	Access track and site working area	Work No. 2B
Parish of Snarestone	6a	Access track and site working space	Work No. 2B and Work No. 4
Parish of Measham	7a	Access track and site working space	Work No. 2C and Work No. 4
Parish of Measham	8a	Access track and site working space	Work No. 2C
Parish of Measham	10a	Access track and site working space	Work No. 2C and Work No. 5
Parish of Measham	12a	Access track and site working space	Work No. 2D, Work No. 6 and Work No. 7
Parish of Measham	12b	Access, highway diversion and contractor's site	Work No. 2D and Work No. 5
Parish of Measham	13a	Access track and site working space	Work No. 2F
Parish of Measham	14a	Access track	Work No. 2F
Parish of Measham	15a	Access track	Work No. 2F
Parish of Measham	16a	Access track and site working space	Work No. 2F and Work No. 8
Parish of Measham	22a	Access track and site working space	Work No. 2J
Parish of Measham	23a	Access track and site working space	Work No. 2J
Parish of Measham	24a	Access track and site working space	Work No. 2J
Parish of Measham	31a	Access track and site working space	Work No. 2J and Work No. 10

## SCHEDULE 9

Article 29(4)

### TRANSFER OF CANAL TO BRITISH WATERWAYS BOARD

**1.** In this Schedule—

“the Board’s legislation”, in relation to any transfer, means any byelaws made by the Board under any enactment and in force on the transfer date and any provision of any public general act or private act applying in relation to the Board; and

“the disappplied provisions” means the byelaws made under article 24 which, by virtue of article 29(3)(b) above cease to apply in relation to the transferred Canal as from the transfer date.

2. In so far as anything done, or begun, under the disappplied provisions could have been (respectively) done, or begun, under any provision of the Board’s legislation relating to the same matter, it shall have effect as if done, or (as the case may be) begun, under that provision.

## SCHEDULE 10

Article 32

### PROVISIONS FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

1. The following provisions shall apply unless otherwise agreed in writing between Leicestershire County Council and the Environment Agency.

2. In this Schedule—

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

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

“drainage work” means any watercourse, and includes any land which 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;

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

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

“specified work” means so much of any authorised works as are in, on, under, over or within 16 metres of a watercourse or are 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.

3. Before beginning to construct any specified work, the undertaker 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.

4. 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.

5. Any approval of the Environment Agency required under paragraph 4—

- (a) shall be deemed to have been given if it is neither given nor refused in writing within 56 days of the submission of the plans for approval; and
- (b) 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 or in the discharge of its environmental and recreational duties.

6. Where any approval required under paragraph 4 is refused, it shall be accompanied by a statement of the grounds of refusal.

7. The requirements which the Environment Agency may make as a condition of its approval under paragraph 4 include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified works

(including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (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.

**8.** Any specified work, and any protective works required by the Environment Agency as a condition of its approval under paragraph 4, shall be constructed—

- (a) with all reasonable despatch in accordance with the plans approved or deemed to have been approved under this Schedule; and
- (b) to the reasonable satisfaction of the Environment Agency;

and any officer of the Environment Agency authorised to act on its behalf for the purpose shall be entitled to watch and inspect the construction of such works.

**9.** The undertaker 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.

**10.** 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 undertaker, at the undertaker's own expense, to comply with the requirements of this Schedule or, if the undertaker so elects and the Environment Agency in writing consents, to remove, alter or pull down the structure 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.

**11.** Subject to paragraph 12, if within a reasonable period, being not less than 28 days from the date when a notice under paragraph 10 is served upon the undertaker, it has failed to begin to take steps to comply with the requirements of the notice or 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 undertaker.

**12.** In the event of any dispute as to whether the condition in paragraph 10 for the service of a notice under that paragraph is met in relation to any work in respect of which a notice has been served under that paragraph, or as to the reasonableness of any requirement of such a notice, the Environment Agency shall not except in an emergency exercise the powers conferred by paragraph 11 until the dispute has been finally determined.

**13.** The undertaker shall from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation, on land owned by the undertaker or which it otherwise controls, or on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the Order or is already in existence.

**14.** If any such work which the undertaker 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 undertaker to repair and restore the work, or any part thereof, or, if the undertaker so elects and the Environment Agency in writing consents, to remove the work and restore the site to its former condition, to such extent and within such limits as the Environment Agency may reasonably require.

**15.** 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 paragraph 14 on the undertaker, the undertaker has failed to begin to take 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 itself take any steps necessary to meet their requirements and may recover from the undertaker any expenditure reasonably incurred by it in doing so.

**16.** In the event of any dispute as to the reasonableness of any requirement of a notice served under paragraph 14, the Environment Agency shall not, except in a case of an emergency, exercise the powers conferred by paragraph 15 above until the dispute has been finally determined.

**17.** If, by reason of the construction of any specified work or of the failure of any such work to operate satisfactorily, the efficiency of any drainage work for flood defence purposes is impaired, or any such drainage work is otherwise damaged, the undertaker shall make good such impairment or damage to the reasonable satisfaction of the Environment Agency, and if the undertaker fails to do so, the Environment Agency may make good the same and recover from the undertaker the expense reasonably incurred by it in doing so.

**18.** The undertaker 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.

**19.** If by reason of—

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

damage to any 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 undertaker requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

**20.** If, within such time as may be reasonable for that purpose after the receipt of written notice from the Environment Agency of any damage or expected damage to the fishery, the undertaker fails to take such steps as are specified in a notice under paragraph 19, the Environment Agency may take those steps and may recover from the undertaker the expense reasonably incurred by it in doing so.

**21.** 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 undertaker the reasonable cost of doing so, provided that a notice specifying the steps taken by the Environment Agency is served on the undertaker as soon as is reasonably practicable after the Environment Agency has taken, or commenced to take, the steps specified in the notice.

**22.** The undertaker shall indemnify the Environmental Agency in respect of all costs, charges and expenses which the Environment Agency may reasonably incur—

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

**23.** Without prejudice to the other provisions of this Schedule, the undertaker 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 which is such as to impair its efficiency for the purposes of flood defence,
- (b) any damage to any fishery,
- (c) any raising or lowering of the water table in land adjoining the authorised works or any sewers, drains or watercourses,
- (d) any flooding or increased flooding of any such lands, or
- (e) any impairment of 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 undertaker or its contractors or agents whilst engaged upon the work.

**24.** The Environment Agency shall give to the undertaker reasonable notice of any such claim or demand and no settlement or compromise thereof shall be made without the agreement of the undertaker.

**25.** 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 direction or award of an arbitrator, shall not relieve the undertaker from any liability for a failure to comply with any provision of this Schedule.

**26.** Any dispute arising between the undertaker and the Environment Agency under this Schedule (other than a difference as to its construction) shall, if the parties agree, be determined by arbitration, but shall otherwise be determined by the Secretary of State for the Environment Food and Rural Affairs.

### **EXPLANATORY NOTE**

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

This Order is made under section 3 of the Transport and Works Act 1992 and authorises Leicestershire County Council (the Council) compulsorily to acquire land and construct works to restore to navigation a disused length of the Ashby de la Zouch Canal (the Ashby Canal). The length to be restored extends from the current terminus of the Ashby Canal near Snarestone to Measham in the District of North West Leicestershire.

The works to be carried out are set out in Schedule 1 to the Order.

Part 2 of the Order gives the Council powers to carry out the works set out in Schedule 1 (article 3) and to carry out works for ancillary purposes. It sets the limits by which the Council may deviate from the limits shown on the works plans and sections (article 4). It gives the Council powers to execute street works on streets specified in Schedule 4 to the Order (article 5). It allows the Council to stop up streets, either permanently or temporarily (articles 6 and 7) and provide access to the works (article 8). Details of the streets to be stopped up are contained in Schedules 5 and 6 to the Order. Article 9 applies a number of provisions of the New Roads and Street Works Act 1991 to street works carried out under the Order. Articles 10 and 11 contain provisions as to the maintenance of new and altered streets and the construction of bridges and aqueducts. Article 12 allows the Council to enter into agreements with the street authority for various purposes. There are also supplemental provisions regarding powers to discharge water, abstract groundwater, and survey and investigate land (articles 13, 14 and 15).

Part 3 of the Order contains powers for the Council to acquire land, easements and rights by compulsory purchase for the purposes of carrying out the works (articles 16 and 18) and gives rights to compensation by applying Part I of the Compulsory Purchase Act 1965 (article 17). It also gives the Council the power to create new rights (article 18(1)(b)). Schedule 7 applies the Land Compensation Act 1973 and the Compulsory Purchase Act 1965 with modifications in relation to a newly created right. Article 19 confers a power to take possession of land for the temporary construction of works and contains ancillary provisions. Schedule 8 to the Order specifies the land of which temporary possession may be taken by reference to the land plans and works plans and sets out the purpose for which it can be taken. Article 20 requires certain interests and improvements to be disregarded in certain circumstances for the purpose of assessing compensation. There are supplementary provisions, including provision for cases where the Council wishes to acquire only a part of land (article 21), for the extinction or suspension of private rights of way (article 22), and for a time limit for the Council to acquire land (article 23).

Part 4 of the Order gives the Council the power to make byelaws for the regulation and management of the restored canal (article 24). It also gives the Council powers to manage the canal and charge for its use (article 25), sets the jurisdictional limits of the canal as between the Council and British Waterways (article 26), and transfers to the undertaker from the British Waterways Board certain statutory rights, powers, privileges and obligations (article 27). Article 28 allows the Council and the British Waterways Board to enter into agreements regarding the management of the canal. Article 29 permits the Council to transfer the canal or any part of it to British Waterways, or, with the prior consent of the Secretary of State, to any other person. Schedule 9 sets out transitional provisions in relation to the transfer of the canal or any part of it to British Waterways.

Part 5 of the Order contains miscellaneous provisions, including provisions relating to the disclosure of confidential information (article 30), the service of notices (article 34), and the arbitration of disputes under the Order which do not fall to be determined by the Lands Tribunal (article 36). Schedules 2 and 10 both have effect under this Part of the Order (articles 31 and 32). Schedule 2 contains provisions for dealing with the apparatus of statutory undertakers on land acquired by the Council or in streets which the Council have stopped up. Schedule 10 contains provisions to protect the Environment Agency's interests while the works are being carried out.

A copy of the works plans and land plans, the sections and the book of reference mentioned in this Order, and certified in accordance with article 33 of this Order, may be inspected free of charge between 09.30 and 16.30 on Mondays to Fridays at Leicestershire County Council, County Hall, Glenfield, Leicester, LE3 8RJ (Tel. 0116 2657090 or 0116 2657080).

A full regulatory impact has not been prepared in respect of this Order, as it has no impact on the costs of business.

**£4.50**

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