

2008 No. 2512

TRANSPORT AND WORKS, ENGLAND
TRANSPORT, ENGLAND

**The Felixstowe Branch Line and Ipswich Yard
Improvement Order 2008**

Made - - - - - 23rd September 2008

Coming into force - - - - - 14th October 2008

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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) for an Order under sections 1 and 5 of the Transport and Works Act 1992^(b) (“the 1992 Act”).

The Secretary of State caused an inquiry to be held for the purposes of the application pursuant to section 11 of the 1992 Act.

The Secretary of State, having considered the objections made and not withdrawn and the report of the person who held the inquiry has determined to make an Order giving effect to the proposals comprised in the application with modifications which in her opinion do not make any substantial change to the proposals.

The Secretary of State is satisfied that the provision of an alternative right of way for each of the streets mentioned in Part 2 of Schedule 3 and Part 3 of Schedule 7 is not required.

Notice of the Secretary of State’s determination was published in the London Gazette on 25th July 2008.

Accordingly, the Secretary of State, in exercise of the powers conferred by sections 1 and 5 of, and paragraphs 1 to 8, 10 to 12, and 15 to 17 of Schedule 1 to, the 1992 Act makes the following Order:—

(a) S.I. 2000/2190. As made under sections 6, 6A, 7 and 10 of the Transport and Works Act 1992.

(b) 1992 c. 42. As amended by S.I. 1995/1541, 1998/2226, 2000/3199 and 2006/958.

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Felixstowe Branch Line and Ipswich Yard Improvement Order 2008 and shall come into force on 14th October 2008.

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);

“the 1993 Act” means the Railways Act 1993(e);

“address” includes any number or address used for the purposes of electronic transmission;

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

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

“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;

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

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

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

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

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace, and

“maintenance” shall be construed accordingly;

“Network Rail” 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(g)), the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or other subsidiary of the holding company of Network Rail Infrastructure Limited;

“operator” means an operator within the meaning of section 6(2) of the 1993 Act;

“the Order limits” means any limits of deviation and any limits of land to be acquired or used which are shown on the works and land plans;

“owner”, in relation to land, has the same meaning as in the Acquisition of Land Act 1981(h);

“the railway” means any railway authorised to be constructed by this Order and any other authorised works, except where the context otherwise requires;

(a) 1961 c. 33.

(b) 1965 c. 56.

(c) 1990 c. 8.

(d) 1991 c. 22. As amended by the Traffic Management Act 2004 c. 18.

(e) 1993 c. 43.

(f) 1980 c. 66.

(g) 1985 c. 6.

(h) 1981 c. 67.

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

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

“the sections” means the sections shown on the works and land plans and 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 3 of the 1991 Act;

“the tribunal” means the Lands Tribunal;

“the undertaker” means The Felixstowe Dock and Railway Company being a company limited by shares and incorporated by the Felixstowe Railway and Pier Act 1875^(a) whose registered number is 02590042;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“works and land plans” means the plans certified by the Secretary of State as the works and land plans for the purposes of this Order, and references to land shown on these plans are references to land so shown in pursuance of rule 12(5) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2000.

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

(3) All distances, directions and lengths stated in the description of the scheduled works or in any description of powers or lands shall be construed as if the words “or thereabouts” were inserted after each such distance, direction and length, and distances between points on a scheduled work shall be taken to be measured along the scheduled work.

Incorporation of Railways Clauses Acts

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

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

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

section 61 (company to make sufficient approaches and fences to highways crossing on the level);

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 75 (omission to fasten gates);

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

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^(c);

sections 103 and 104 (refusal to quit carriage at destination);

section 105 (carriage of dangerous goods on railway);

section 145 (recovery of penalties); and

section 154 (transient offenders).

(2) The following provisions of the Railways Clauses Act 1863^(d) shall be incorporated in this Order—

sections 5 and 7 (level crossings); and

section 12 (signals, watchmen etc.).

(a) 1875 c. cxlv.

(b) 1845 c. 20.

(c) 1923 c. 20.

(d) 1863 c. 92.

- (3) In those provisions, as incorporated in this Order—
“the company” means the undertaker;
“goods” includes any thing conveyed on the railway authorised to be constructed by this Order;
“lease” includes an agreement for a lease;
“prescribed”, in relation to any such provision means prescribed by this Order for the purposes of that provision;
“the railway” means the railway as defined in article 2(1);
“the special Act” means this Order;
“toll” includes any rate or charge or other payment payable under this Order or any other enactment for any passenger or goods conveyed on any railway authorised to be constructed by this Order.

(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.”.

Application of the 1991 Act

4.—(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 3 of the 1991 Act (street works) as major transport works if—

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

(2) The provisions of the 1991 Act mentioned in paragraph (3) which, together with other provisions of that Act, apply in relation to the execution of street works and any regulations made or code of practice issued or approved under those provisions shall apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by this Order whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

- (3) The provisions of the 1991 Act referred to in paragraph (2) are—
section 54 (advance notice of certain works), subject to paragraph (4);
section 55 (notice of starting date of works), subject to paragraph (4);
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);
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.

(4) Sections 54 and 55 of the 1991 Act as applied by paragraph (2) shall have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

- (5) Nothing in article 13 (construction and maintenance of new or altered streets) shall—
(a) prejudice the operation of section 87 of the 1991 Act (prospectively maintainable highways); and the undertaker shall not by reason of any duty under that article to maintain a street be taken to be a street authority in relation to that street for the purposes of Part 3 of that Act; or
(b) have effect in relation to street works with regard to which the provisions of Part 3 of the 1991 Act apply.

PART 2

WORKS PROVISIONS

Principal powers

Power to construct and maintain works

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

(2) Subject to article 6 (power to deviate), the scheduled works may only be constructed in the lines or situations shown on the works and land 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, erect and construct such offices and other buildings, yards, engines, machinery, apparatus, structures and other works, and conveniences as the undertaker sees fit;
- (c) junctions and communications (including the provision of steps and ramps for the use of persons on foot) with any highway or access way intersected or interfered with by, or contiguous to, any of those works, and widen or alter any highway or access way for the purposes of connecting it with any of those works or another highway, or of crossing under or over the highway or access way;
- (d) all such embankments, aprons, abutments, retaining walls, wing walls, culverts and other such works as the undertaker thinks fit;
- (e) works to alter the course of, or otherwise interfere with, a watercourse other than a navigable watercourse;
- (f) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the scheduled works; and
- (g) works for the benefit or protection of premises affected by the scheduled works.

(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 shown on the works and land plans as being within the limits of land to be acquired or used.

Power to deviate

6. In constructing or maintaining any of the scheduled works, the undertaker may—
- (a) deviate laterally from the lines or situations shown on the works and land plans to the extent of the limits of deviation for that work; and
 - (b) deviate vertically from the levels shown on the sections—
 - (i) to any extent not exceeding 3 metres upwards; or
 - (ii) to any extent downwards as may be found to be necessary or convenient.

Streets

Power to execute street works

7.—(1) The undertaker may, for the purposes of the authorised works, enter upon so much of any of the streets specified in Schedule 2 (streets subject to street works) as is within the Order limits 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 sub-paragraphs (a), (b) and (c).

(2) This article is subject to paragraph 3 of Schedule 9 (provisions relating to statutory undertakers, etc.).

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

Stopping up of streets

8.—(1) Subject to the provisions of this article, the undertaker may, in connection with the construction of the authorised works, stop up each of the streets specified in columns (1) and (2) of Parts 1 and 2 of Schedule 3 (streets to be permanently stopped up) to the extent specified, by reference to the letters and numbers shown on the rights of way plans, in column (3) of those Parts of that Schedule.

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

- (a) the new street to be substituted for it, which is specified in column (4) of that Part of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and thereafter maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).

(3) No street specified in columns (1) and (2) of Part 2 of Schedule 3 (being a street 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 (4) is satisfied in relation to all the land which abuts on either side of the street to be stopped up.

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

- (a) the undertaker is in possession of the land; or
- (b) there is no right of access to the land from the street concerned; or
- (c) there is reasonably convenient access to the land otherwise than from the street concerned; or
- (d) the owners and occupiers of the land have agreed to the stopping up.

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

- (a) all rights of way over or along the street so stopped up shall be extinguished; and
- (b) the undertaker may appropriate and use for the purposes of its railway undertaking so much of the site of the street as is bounded on both sides by land owned by the undertaker.

(6) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(7) This article is subject to paragraph 2 of Schedule 9 (provisions relating to statutory undertakers, etc.).

Highways subject to redesignation

9.—(1) Subject to the provisions of this article, the following highways shall, at the relevant time, cease to be highways of the description specified on the definitive map and statement and shall be designated as highways as described and to the extent specified below by reference to the letters and numbers shown on the rights of way plans—

- (a) in the case of restricted byway Number 28 (Parish of Trimley St Mary) and restricted byway Number 3 (Parish of Trimley St Martin), to be designated as a bridleway for its entire length between points TF15 and PF12; and

- (b) in the case of Footpath Number 29 (Trimley St Martin), to be designated as a bridleway between points PF9 and PF10.
- (2) In each case where a highway has been redesignated, the redesignation shall have effect as if that highway had been stopped up and immediately rededicated as a bridleway.
- (3) In this article—
 - (a) all expressions used in this article and in the Wildlife and Countryside Act 1981^(a) shall have the same meaning in this article as in that Act; and
 - (b) “the relevant time” means the time at which the new highway to be substituted for restricted byway 28 (Gun Lane) (to be provided pursuant to article 8 (stopping up of streets) and specified in column (4) of Part 1 of Schedule 3) is open for use by the public.

Temporary stopping up of streets

- 10.—**(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 (3), prevent all persons from passing along the street.
- (2) Without prejudice to the generality of paragraph (1), the undertaker may use any street stopped up under the powers conferred by this article as a temporary working site.
- (3) 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 there would otherwise be no such access.
- (4) Without prejudice to the generality of paragraph (1), the undertaker may exercise the powers conferred by this article in relation to the streets specified in columns (1) and (2) of Schedule 4 (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the rights of way plans, in column (3) of that Schedule.
- (5) The undertaker 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 which may attach reasonable conditions to any consent, but such consent shall not be unreasonably withheld.
- (6) 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 1 of the 1961 Act.

Traffic regulation

- 11.—**(1) Subject to the provisions of this article, and with the consent of the traffic authority in whose area the road is situated, the undertaker may, during and for the purposes of the execution of the authorised works, temporarily restrict the direction of vehicular traffic on Old Felixstowe Road between points T1 and T2 as shown on the rights of way plans.
- (2) The consent of the traffic authority under paragraph (1) shall not be unreasonably withheld.
- (3) The power in paragraph (1) shall only be exercised in relation to heavy goods vehicles and public service vehicles travelling in the westbound direction.
- (4) The undertaker shall consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (5).
- (5) The undertaker shall not exercise the power in paragraph (1) unless it has—
- (a) given not less than 4 weeks’ notice in writing of its intention to do so to the chief officer of police and to the traffic authority in whose area the road is situated; and
 - (b) advertised its intention as if the proposed restriction was to be authorised pursuant to section 14(1)(a) of the 1984 Act in accordance with the Regulations.

^(a) 1981 c. 69.

(6) Any restriction of vehicular traffic made by the undertaker under the powers conferred by paragraph (1) shall have effect as if made by the traffic authority in whose area the road is situated as if it were an order under section 14(1)(a) of the 1984 Act and shall last for such period as the notice given under paragraph (5)(b) of this article may specify which shall in any event terminate upon the opening for traffic of the railway.

(7) Any restriction made by the undertaker under this article may also be varied or revoked from time to time by the traffic authority in whose area the road is situated by an order under the 1984 Act provided that no such order may be made to revoke any provision previously made by the undertaker under this article without the undertaker's consent, such consent not to be unreasonably withheld.

(8) In this article—

“the 1984 Act” means the Road Traffic Regulation Act 1984^(a) and all expressions used in this article and in the 1984 Act shall have the same meaning in this article as in that Act;

“heavy goods vehicle” has the meaning given to it in section 115 of the Highways Act 1980^(b);

“public service vehicle” has the meaning given to it in section 1 of the Public Passenger Vehicles Act 1981^(c); and

“the Regulations” means article 3 (procedure for making a temporary order) of the Road Traffic (Temporary Restrictions) Procedure Regulations 1992^(d).

Access to works

12. The undertaker may, for the purposes of the authorised works—

(a) form and lay out means of access, or improve existing means of access, to the streets specified in columns (1) and (2) of Schedule 5 (access to works); and

(b) with the approval of the highway authority, such approval not to be unreasonably withheld, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised works.

Construction and maintenance of new or altered streets

13.—(1) Any street intended to be a public highway to be constructed under this Order shall be completed to the reasonable satisfaction of the highway authority and shall, unless otherwise agreed, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the highway authority.

(2) Where a street is altered or diverted under this Order, the altered or diverted part of the street shall, when completed to the reasonable satisfaction of the street authority, unless otherwise agreed, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(3) Paragraphs (1) and (2) do not apply in relation to the structure of any bridge or tunnel carrying a street over or under any railway of the undertaker.

(4) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it shall be a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(5) For the purposes of a defence under paragraph (4), the court shall in particular have regard to the following matters—

(a) the character of the street and the traffic which was reasonably to be expected to use it;

(b) the standard of maintenance appropriate for a street of that character and used by such traffic;

(c) the state of repair in which a reasonable person would have expected to find the street;

(a) 1984 c. 27.

(b) 1980 c. 66.

(c) 1981 c. 14.

(d) S.I. 1992/1215.

- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street;
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of the action arose, what warning notices had been displayed,

but for the purposes of such defence it is not relevant to prove that the undertaker had arranged for a competent person to carry out or supervise the maintenance of the part of the street to which the action relates unless it is also proved that the undertaker had given him proper instructions with regard to the maintenance of the street and that he had carried out those instructions.

Construction of bridges

14. Any bridge to be constructed under this Order for carrying a highway over or under a railway shall be constructed in accordance with the plans and specifications approved by the highway authority, but such approval shall not be unreasonably withheld.

Agreements with street authorities

- 15.—**(1) A street authority and the undertaker may enter into agreements with respect to—
- (a) the construction of any new street (including any structure carrying the street over or under a railway) under the powers conferred by this Order;
 - (b) the maintenance of the structure of any bridge carrying a street over or under a railway;
 - (c) the provision of any of the altered level crossings over the streets referred to in article 16(1) (alterations to level crossings as a result of the authorised works);
 - (d) the provision of any of the new level crossings over the footpaths referred to in article 17(1) (provision of new level crossings in substitution for existing level crossings);
 - (e) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
 - (f) the execution in the street of any of the works referred to in article 7(1) (power to execute street works).
- (2) Such an agreement may, without prejudice to the generality of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question; and
 - (b) contain such terms as to payment and otherwise as the parties consider appropriate.

Level crossings

Alterations to level crossings as a result of the authorised works

16.—(1) The undertaker may, in connection with the construction of the authorised works, carry the railway on the level across the streets specified in columns (1) and (2) of Part 1 of Schedule 7 (level crossings).

(2) The undertaker may in the exercise of the powers conferred by this article alter the level of any street which is referred to in Part 1 of Schedule 7 (level crossings).

(3) In this article “the railway” means the railway forming part of the authorised works.

Provision of new level crossings in substitution for existing level crossings

17.—(1) The undertaker may, in connection with the construction of the authorised works, carry the railway on the level across the footpaths specified in columns (1) and (2) of Part 2 of Schedule 7 (level crossings).

(2) The undertaker may, in connection with the construction of the authorised works, provide a new level crossing in substitution for an existing level crossing.

(3) The undertaker may in the exercise of the powers conferred by this article alter the level of any footpath which is referred to in Part 2 of Schedule 7 (level crossings).

(4) Subject to paragraph (5), each existing level crossing shall be stopped up and discontinued and any right of way over it shall be extinguished.

(5) Paragraph (4) shall not take effect with respect to an existing level crossing until the new level crossing has been completed and is open for public use in accordance with the reasonable requirements of the highway authority.

(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 1 of the 1961 Act.

(7) This article is subject to the provisions of paragraph 2 of Schedule 9 (provisions relating to statutory undertakers, etc.).

(8) In this article—

“existing level crossing” means any place at which the Felixstowe Branch Line crosses on the level the footpaths specified in columns (1) and (2) of Part 2 of Schedule 7 (level crossings);

“new level crossing” means any new level crossing specified in column (3) of Part 2 of Schedule 7 (level crossings) in relation to an existing level crossing; and

“railway” means the railway forming part of the authorised works.

Stopping up of level crossings

18.—(1) Subject to paragraph (4), the level crossings specified in columns (1) and (2) of Part 3 of Schedule 7 (level crossings) shall be stopped up and discontinued.

(2) Subject to paragraph (4), upon the stopping up and discontinuance of each of the level crossings referred to in paragraph (1), any right of way over it shall be extinguished, to the extent described in column (3) of Part 3 of Schedule 7 (level crossings).

(3) 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 1 of the 1961 Act.

(4) This article is subject to the provisions of paragraph 2 of Schedule 9 (provisions relating to statutory undertakers, etc.).

Supplemental powers

Discharge of water

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

(2) Any dispute arising from the exercise of the powers in paragraph (1) to connect to or use a public sewer or drain shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991(a).

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

(a) 1991 c. 56.

- (4) The undertaker shall not make any opening into any public sewer or drain except—
 - (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval shall not be unreasonably withheld; and
 - (b) where that person has been given the opportunity to supervise the making of the opening.
- (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.
- (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 as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.
- (7) 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).
- (8) In this article—
 - (a) “public sewer or drain” means a sewer or drain which belongs to the Commission for the New Towns, the Environment Agency, a harbour authority within the meaning of the Harbours Act 1964(b), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and
 - (b) other expressions, except watercourse, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

Protective works to buildings

20.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker considers to be necessary or expedient.

- (2) Protective works may be carried out—
 - (a) at any time before or during the construction in the vicinity of the building of any part of the authorised works; or
 - (b) after the completion of the construction of that part of the authorised works in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised works is first opened for use.
- (3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.
- (4) For the purpose of carrying out protective works under this article to a building the undertaker may (subject to paragraphs (5) and (6))—
 - (a) enter the building and any land within its curtilage; and
 - (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).
- (5) Before exercising—
 - (a) a right under paragraph (1) to carry out protective works to a building;
 - (b) a right under paragraph (3) to enter a building and land within its curtilage;
 - (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
 - (d) a right under paragraph (4)(b) to enter land,
 the undertaker shall, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days’ notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(a) 1991 c. 57.

(b) 1964 c. 40.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 52 (arbitration).

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

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised works constructed in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the construction or operation of that part of the authorised works,

the undertaker shall compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Without prejudice to article 51 (no double recovery) nothing in this article shall relieve the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act.

(10) Any compensation payable under paragraph (7) or (8) shall be determined, in case of dispute, under Part 1 of the 1961 Act.

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

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the construction, maintenance or operation of the authorised works; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, maintenance or operation of the authorised works.

Power to survey and investigate land

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

- (a) survey or investigate any land shown within the Order limits or which may be affected by the authorised works;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions as the undertaker thinks fit on the land to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of paragraph (a), carry out ecological or archaeological investigations on such land;
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes; 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 undertaker—

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

(4) No trial holes shall be made under this article—

- (a) in a carriageway or footway without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent shall not be unreasonably withheld.

(5) The undertaker shall compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) Nothing in this article shall obviate the need to obtain scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979(a).

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

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

(2) This article is subject to article 27 (temporary use of land for construction of works).

Application of Part 1 of the Compulsory Purchase Act 1965

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

- (a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981(b) applies; and
- (b) as if this Order were a compulsory purchase order under that Act.

(2) Part 1 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.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

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

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied by paragraph (1), shall have effect with the following modifications.

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

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

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

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

(5) In that section, for subsections (5) and (6) there shall be substituted—

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

- (a) he is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or

(a) 1979 c. 46.

(b) 1981 c. 67.

(c) 1981 c. 66.

(b) he holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

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

(a) in subsection (1), after “publication” there shall be inserted “in a local newspaper circulating in the area in which the land is situated”; and

(b) subsection (2) shall be omitted.

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

(8) References to the 1965 Act shall be construed as references to that Act as applied to the acquisition of land under article 22 (power to acquire land).

Power to acquire new rights

25.—(1) The undertaker may acquire compulsorily such easements or other rights over any land referred to in paragraph (1) of article 22 (power to acquire land) 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 (modification of compensation and compulsory purchase enactments for creation of new rights)) where the undertaker acquires a right over land under paragraph (1) the undertaker shall not be required to acquire a greater interest in that land.

(3) Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights) 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.

Rights under or over streets

26.—(1) The undertaker may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised works and may use the subsoil or air-space for those purposes or any other purpose ancillary to its undertaking.

(2) Subject to paragraph (4), the power under paragraph (1) may be exercised in relation to a street without the undertaker being required to acquire any part of the street or any easement or right in the street.

(3) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person’s interest in the land, and who suffers loss by the exercise of that power, shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) Paragraph (2) shall not apply in relation to—

(a) any subway or underground building; or

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

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

Temporary possession of land

Temporary use of land for construction of works

27.—(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 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the authorised works so specified in column (4) of that Schedule;

(b) remove any buildings and vegetation from that land;

- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
 - (d) use the land for the purposes of a working site with access to the working site for construction purposes in connection with the authorised works.
- (2) Not less than 14 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 may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the work specified in relation to that land in column (4) of Schedule 8 (land of which temporary possession may be taken).
- (4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker shall not be required to replace a building removed under this article.
- (5) The undertaker shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.
- (6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.
- (7) Without prejudice to article 51 (no double recovery), nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5).
- (8) The powers of compulsory acquisition of land conferred by this Order shall not apply in relation to the land referred to in paragraph (1) except that the undertaker shall not be precluded from acquiring new rights over any part of that land under article 25 (power to acquire new rights).
- (9) Where the undertaker takes possession of land under this article, it shall not be required to acquire the land or any interest in it.
- (10) Section 13 of the 1965 Act shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 23(1) (application of Part 1 of the Compulsory Purchase Act 1965).

Temporary use of land for maintenance of works

- 28.—**(1) Subject to paragraph (2), at any time during the maintenance period relating to any of the scheduled works, the undertaker may—
- (a) enter upon and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the work or any ancillary works connected with it; and
 - (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.
- (2) Paragraph (1) shall not authorise the undertaker to take temporary possession of—
- (a) any house or garden belonging to a house; or
 - (b) any building (other than a house) if it is for the time being occupied.
- (3) Not less than 28 days before entering upon and taking temporary possession of land under this article the undertaker shall serve notice of the intended entry on the owners and occupiers of the land.
- (4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of works for which possession of the land was taken.
- (5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

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

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.

(8) Without prejudice to article 51 (no double recovery), nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

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

(10) Section 13 of the 1965 Act shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 23(1) (application of Part 1 of the Compulsory Purchase Act 1965).

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

Compensation

Disregard of certain interests and improvements

29.—(1) In assessing the compensation 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.

Set-off for enhancement in value of retained land

30.—(1) In assessing the compensation payable to any person in respect of the acquisition from him under this Order of any land (including the subsoil) the tribunal shall set off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity which will accrue to him by reason of the construction of the authorised works.

(2) In assessing the compensation payable to any person in respect of the acquisition from him of any new rights over land (including the subsoil) under article 25 (power to acquire new rights), the tribunal shall set-off against the value of the rights so acquired—

- (a) any increase in the value of the land over which the new rights are required; and
- (b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity,

which will accrue to him by reason of the construction of the authorised works.

(3) The 1961 Act shall have effect, subject to paragraphs (1) and (2), as if this Order were a local enactment for the purposes of that Act.

Supplementary

Acquisition of part of certain properties

31.—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 23 (application of Part 1 of the Compulsory Purchase Act 1965)) 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 manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and

(b) a copy of this article is served on the owner with the notice to treat.

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

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

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

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

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

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

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

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

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

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

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

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

(a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but

(b) the material detriment is confined to a part of the land subject to the counter-notice, the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker agrees to take the land subject to the counter-notice, or if the tribunal 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) the material detriment is not confined to a part of the land subject to the counter-notice,

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

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

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

Extinction or suspension of private rights of way

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

(a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or

(b) on the date of 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 owned by the undertaker which, being within the limits of land which may be acquired shown on the works and land plans, are required for the purposes of this Order shall be extinguished on the appropriation of the land for any of those purposes by the undertaker.

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

(4) Any person who suffers loss by the 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 1 of the 1961 Act.

(5) 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.) or paragraph 2 of Schedule 9 (provisions relating to statutory undertakers, etc.) applies.

Time limit for exercise of powers of acquisition

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

(a) no notice to treat shall be served under Part 1 of the 1965 Act as applied to the acquisition of land by article 23 (application of Part 1 of the Compulsory Purchase Act 1965); and

(b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981(a) as applied by article 24 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The powers conferred by article 27 (temporary use of land for construction of works) shall cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph shall prevent the undertaker remaining in possession of land after the end of that period, if the land was entered and possession of it was taken before the end of that period.

PART 4

MISCELLANEOUS AND GENERAL

Planning permission and supplementary matters

34.—(1) In relation to the application of paragraph 3(c) of the Second Schedule of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Tree Preservation Order) Regulations 1969(b) (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(c), or as incorporated in any tree

(a) 1981 c. 66.

(b) S.I. 1969/17.

(c) S.I. 1975/148.

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 3 of that Act for the purposes of that Part.

(2) 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^(a) 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 works authorised by this Order shall not be treated as an outline planning permission.

(3) 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).

Power to lop trees overhanging the authorised works

35.—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised works, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised works or any apparatus used on the authorised works; or
- (b) from constituting a danger to passengers or other persons using the authorised works.

(2) In exercising the powers of paragraph (1), the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from the exercise of those powers.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.

Power to operate and use railway

36.—(1) The undertaker may operate and use the railway as a system, or part of a system, of transport for the carriage of passengers and goods.

(2) The undertaker may permit an operator to operate and use the railway provided that any such operator is a person who has been granted a licence under section 8 of the 1993 Act or is exempted by virtue of section 7 of that Act from being so licensed.

(3) Nothing in this Order, or in any enactment incorporated with or applied by this Order, shall prejudice or affect the operation of Part 1 of the 1993 Act.

Power to transfer undertaking

37.—(1) The undertaker may, with the consent of the Secretary of State—

- (a) transfer to another person ("the transferee") its right to construct, maintain, use or operate the authorised works (or any part of them) and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person ("the lessee") for a period agreed between the undertaker and the lessee the right to construct, maintain, use or operate the authorised works (or any part of them) and such related statutory rights as may be so agreed.

(2) Where an agreement has been made by virtue of paragraph (1) references in this Order to the undertaker shall include references to the transferee or the lessee.

(3) The exercise of the powers conferred by any enactment by any person in pursuance of any transfer or grant under paragraph (1) shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those powers were exercised by the undertaker.

(a) S.I. 1999/1892.

Power to charge fares

38.—(1) The undertaker may demand, take and recover or waive such charges for carrying passengers or goods on the railway comprised in the authorised works, or for any other services or facilities provided in connection with the operation of that railway, as it thinks fit.

(2) The undertaker may permit an operator to demand, take and recover or waive such charges for carrying passengers or goods on the railway comprised in the authorised works, or for any other services or facilities provided in connection with the operation of that railway, as it thinks fit, provided that any such operator is a person who has been granted a licence under section 8 of the 1993 Act, or is exempted by virtue of section 7 of that Act from being so licensed.

Agreements with Network Rail

39.—(1) Without prejudice to article 37 (power to transfer undertaking), the undertaker and Network Rail may enter into and carry into effect agreements with respect to the construction, maintenance, use and operation of—

- (a) any of the authorised works, or any part of those works; and
- (b) any works required for the purposes of or in connection with the authorised works; by Network Rail or by the undertaker, or by the undertaker and Network Rail jointly.

(2) Any agreement made pursuant to the powers conferred by this article may contain such incidental, consequential or supplementary provisions as may be so agreed, including (but without prejudice to the generality of the foregoing) provisions—

- (a) with respect to the defraying of, or the making of contributions towards the costs of such construction, maintenance, use and operation as are referred to in paragraph (1) by the undertaker or by Network Rail or by the undertaker and Network Rail jointly; and
- (b) for the exercise by Network Rail, or by the undertaker, or by Network Rail and the undertaker jointly, of all or any of the powers and rights of Network Rail and the undertaker (as the case may be) in respect of any of the authorised works and any works required for the purposes of or in connection with such works.

(3) The exercise by the undertaker or Network Rail or the undertaker and Network Rail jointly, of any powers and rights under any enactment or contract pursuant to any such agreement as is authorised by paragraph (1) shall be subject to all statutory and contractual provisions relating thereto as would apply if such powers and rights were exercised by the undertaker or Network Rail (as the case may be) alone, and accordingly such provisions shall, with any necessary modifications, apply to the exercise of such powers and rights by the undertaker or Network Rail, or by the undertaker and Network Rail jointly, as the case may be.

(4) The undertaker and Network Rail may enter into, and carry into effect, agreements for the transfer to and vesting in Network Rail or the undertaker, or the undertaker and Network Rail jointly, of—

- (a) any of the authorised works or any part of any of those works; or
- (b) any works, lands or other property required for the purposes of the authorised works or in connection with such works,

together with any rights and obligations (whether or not statutory) of Network Rail or the undertaker relating thereto.

Proceedings in respect of statutory nuisance

40.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (summary proceedings by person aggrieved by statutory nuisance) 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 undertaker for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to the construction or maintenance of the authorised works and that the nuisance is

(a) 1990 c. 43.

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(a); or

- (b) that the nuisance is a consequence of the construction, maintenance or use of the authorised works and that it cannot reasonably be avoided.

(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 undertaker for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to construction or maintenance of the authorised works.

Application of landlord and tenant law

41.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised works or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised works, or any part of them,

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 such agreement so as to—

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

Obstruction of construction of authorised works

42. Any person who, without reasonable excuse—

- (a) obstructs any person acting under the authority of the undertaker in setting out the lines of the scheduled works, or in constructing any authorised work; or
- (b) interferes with, moves or removes any apparatus belonging to any person acting under the authority of the undertaker,

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

Trespass

43.—(1) Any person who—

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

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

(a) 1974 c. 40.

(2) No person shall be convicted of an offence under this article unless it is shown that a notice warning the public not to trespass on the railway was clearly exhibited and maintained at the station or level crossing on the railway nearest the place where the offence is alleged to have been committed.

(3) If the railway or any part of it is transferred to Network Rail under article 39(4) (agreements with Network Rail) this article shall cease to apply to the railway or to the part of it that has been so transferred.

(4) In this article “the railway” means the railway forming part of the authorised works.

Disclosure of confidential information

44. A person who—

(a) enters a factory, workshop or workplace in pursuance of the provisions of article 20 (protective works to buildings) or article 21 (power to survey and investigate land); 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.

Statutory undertakers, etc.

45. The provisions of Schedule 9 (provisions relating to statutory undertakers, etc.) shall have effect.

Protective provisions

46. The provisions of Schedule 10 (protective provisions) shall have effect.

As to application of certain railway enactments

47.—(1) Any enactment which authorised any railway or former railway of Network Rail comprised within the designated lands shall have effect subject to the provisions of this Order.

(2) Nothing in paragraph (1) shall prejudice any express statutory provision for—

(a) the protection of the owner, lessee or occupier of any property which is specifically designated property in such provision; or

(b) the protection or benefit of any public trustees or commissioners, corporation or other person, specifically named in such provision.

(3) In this article “designated lands” means any land which is owned by Network Rail shown on the works and land plans and described in the book of reference.

Application of the Land Drainage Act 1991

48. Section 23(6) of the Land Drainage Act 1991(a) shall not apply in relation to any works authorised by this Order.

Certification of plans, etc.

49. The undertaker shall, as soon as practicable after the making of this Order, submit copies of the book of reference, the sections, the works and land plans and the rights of way plans to the Secretary of State for certification that they are, respectively, true copies of the book of reference, sections, works and land plans and rights of way 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) 1991 c. 59.

Service of notices

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

- (a) by post; or
- (b) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on him of a notice or document under paragraph (1) is, if he has given an address for service, that address, and otherwise—

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

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

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

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement shall be taken to be fulfilled where the recipient of the notice or other document to be transmitted has given his consent to the use of electronic transmission either in writing or by electronic transmission.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that he requires a paper copy of all or any part of that notice or other document the sender shall provide such a copy as soon as reasonably practicable.

(7) A person may revoke his consent to the use of electronic transmission in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) he shall give notice in writing or by electronic transmission revoking any consent given by him for that purpose; and
- (b) such revocation shall be final and shall take effect on a date specified by the person in the notice but that date shall not be less than 7 days after the date on which the notice is given.

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

No double recovery

51. 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.

(a) 1978 c. 30.

Arbitration

52. Any difference under any provision of this Order, unless otherwise provided for, 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 giving notice in writing to the other) by the President of the Institution of Civil Engineers.

Signed by authority of the Secretary of State

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

23rd September 2008

SCHEDULES

SCHEDULE 1

Article 5

SCHEDULED WORKS

County of Suffolk

Borough of Ipswich

Work No. 1 The construction of a railway comprising a new marshalling yard (830 metres in length) by the reconfiguration of the existing railway, commencing at a realigned junction 50 metres east of London Road Bridge, continuing in a generally south easterly direction and terminating at a new junction at a point 200 metres west of the passenger railway platforms at Ipswich Station, the improvement of sidings and other railway infrastructure, the closure of the railway to Ipswich Lower Yard, and the relocation of railway plant and equipment.

Suffolk Coastal District, Parishes of Nacton, Levington and Stratton Hall, Trimley St Martin and Trimley St Mary

Work No. 2 A railway (7150 metres in length) being a second railway line on a parallel alignment with the existing Felixstowe Branch Line railway commencing at a new junction with the Felixstowe Branch Line railway 140 metres west of mile post 78.5, continuing on the southern side of the existing railway and terminating 120 metres west of Trimley Level Crossing, including the replacement of the existing junction near Trimley Station with two crossovers.

Work No. 3 The realignment of the existing automatic half barrier level crossing at Levington (Strattonhall Drift) to accommodate a second railway line by extending the existing level crossing by 4.5 metres southwards, and the re-surfacing of the approaching roads on either side of the level crossing.

Work No. 4 The realignment of the existing automatic half barrier level crossing at Morston Hall (Morston Hall Road) to accommodate a second railway line by extending the existing level crossing by 4.5 metres southwards, and the re-surfacing of the approaching roads on either side of the level crossing.

Work No. 5 A road to be adopted by Suffolk County Council as a highway being a realignment of Grimston Lane commencing at a point 15 metres south of the existing junction of Thorpe Lane and Grimston Lane and continuing in an easterly direction towards a point on the existing alignment of Grimston Lane 60 metres east of the existing junction of Thorpe Lane and Grimston Lane including the resurfacing of Grimston Lane, to a point 180 metres from the existing junction.

Work No. 6 The realignment of the existing automatic half barrier level crossing at Thorpe Lane (adopted highway U3112) to accommodate a second railway line by extending the existing level crossing 4.5 metres southwards, and the re-surfacing of the approaching roads on either side of the level crossing.

STREETS SUBJECT TO STREET WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Streets subject to street works</i>
County of Suffolk Borough of Ipswich	Hadleigh Road, Ranelagh Road/Ipswich Yard
Suffolk Coastal District Parish of Westerfield	Westerfield Road
Parish of Levington and Stratton Hall	Bridge Road, Old Felixstowe Road, Strattonhall Drift, Footpath FP1
Parish of Trimley St Martin	Morston Hall Road, Grimston Lane, Old Felixstowe Road, Restricted byway 28 (Gun Lane), Footpath FP1 (the Suffolk Coast and Heaths Path), Footpath FP8, Grimston Lane Footcrossing, Footpath FP28, Footpath FP29, Footpath FP30, Footpath FP33
Parish of Trimley St Mary	Gun Lane, Footpath FP2, Footpath FP3, Footpath FP4

STREETS TO BE PERMANENTLY STOPPED UP

PART 1

STREETS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street or part of street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New street to be substituted for it</i>
County of Suffolk Suffolk Coastal District Parish of Levington and Stratton Hall	Footpath FP1 (Strattonhall) and Levington Heath Footcrossing	Between points PS1 and PS3	Diversion via point PS2
Parish of Trimley St Martin	Grimston Lane	Between points H1 and H2	Diversion via Work No. 5 (points H2 to H3)
	Footpath FP33 (Trimley St Martin) and No. 23 Footcrossing	Between points PS4 and PS6	Diversion via point PS5
	Footpaths FP29 and 30 (Trimley St Martin) and No. 24 Footcrossing	Between points PS7, PS8 and PF8	Diversion via point PF7 to point PF8
	Restricted byway 28 (Gun Lane) and Gun Lane crossing	Between points PF5 and PF11	Diversion via points PF6, PF7, PF8 and PF9 to point PF10

PART 2

STREETS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street or part of street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>
County of Suffolk Suffolk Coastal District Parish of Trimley St Martin	Footpath FP8 Trimley St Martin and Croft Footcrossing	Permanently stopped up from point PF1 to point PF2 at the existing junction of FP8 with Strattonhall Drift

STREETS TO BE TEMPORARILY STOPPED UP

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
County of Suffolk Suffolk Coastal District Parish of Levington and Stratton Hall	Footpath FP1 (Strattonhall)	Between points TF1 and TF2 and to be temporarily diverted so as to run in a south easterly direction from point TF2 via an alignment following the limits of land to be acquired or used to point TF3 on Strattonhall Drift and thence via Old Felixstowe Road to point TF1
Parish of Trimley St Martin	Footpath FP1 (Trimley St Martin), the Suffolk Coasts and Heaths Path	Between points TF4 and TF5
	Undesignated path at Grimston Lane Footcrossing	Between points FP3 and FP4
	Footpath FP33 (Trimley St Martin)	Between points TF7 and TF8 for a period not exceeding one week on any one occasion and shall be separated from any other such period by an interval of no less than five days
	Footpath FP29 and FP30 (Trimley St Martin)	Between points TF8 and PF10
Parish of Trimley St Martin and Parish of Trimley St Mary	Restricted byway 28 (Trimley St Martin)/FP3 (Trimley St Mary) (Gun Lane)	Between points TF15 and TF16 and to be temporarily diverted via points TF17, TF18, TF19, TF20, TF21 and TF22 and then via Keepers Lane, Gaymers Lane and High Road, Trimley St Mary to point TF15
	Footpath FP2 (Trimley St Martin)	Between points TF23 and TF24
Parish of Trimley St Mary	Footpath FP4 (Trimley St Mary)	Between points TF9 and TF14 and to be temporarily diverted via points TF10, TF11, TF12 and TF13 to point TF14

SCHEDULE 5
ACCESS TO WORKS

Article 12

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Description of access</i>
County of Suffolk Borough of Ipswich	Access No. A 1—Hadleigh Road
	Access No. A 2—Ranelagh Road
	Access No. A 3—Ranelagh Road
Borough of Ipswich and Suffolk Coastal District	
Parish of Westerfield	Access No. A 4—Westerfield Road
Suffolk Coastal District Parish of Nacton	Access No. A 5—Old Felixstowe Road
	Access No. A 6—Old Felixstowe Road
	Access No. A 7—Bridge Road
	Access No. A 8—Bridge Road
Parish of Levington and Stratton Hall	Access No. A 9—Strattonhall Drift
	Access No. A 10—Strattonhall Drift
	Access No. A 11—Old Felixstowe Road
Parish of Trimley St Martin	Access No. A 12—Morston Hall Road
	Access No. A 13—Morston Hall Road
	Access No. A 15—Thorpe Lane
	Access No. A 16—High Road, Trimley St Martin

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”.

Application 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 1 of the 1965 Act shall apply in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

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

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

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

(a) 1973 c. 26.

“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 Felixstowe Branch Line and Ipswich Yard Improvement Order 2008(a) (“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) 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) 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 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”.

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

shall be so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired is vested absolutely in the acquiring authority.

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

(a) S.I. 2008 2512/[].

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

SCHEDULE 7
LEVEL CROSSINGS

Articles 16, 17 and 18

PART 1

LEVEL CROSSINGS ALTERED AS A RESULT OF THE AUTHORISED WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street across which railway carried</i>
County of Suffolk Borough of Ipswich / Suffolk Coastal District Parish of Westerfield	B1077 (Westerfield Road/Hurdle Road) (Westerfield Level Crossing)
Suffolk Coastal District Parish of Levington and Stratton Hall	Strattonhall Drift (Levington Level Crossing)
Parish of Trimley St Martin	Grimston Lane (undesignated path) (Grimston Lane Footcrossing) Morston Hall High Road (Morston Hall Level Crossing) FP1 Trimley St Martin (Thorpe Common Footcrossing) Thorpe Lane (adopted highway U3112) (Thorpe Lane Level Crossing)
Parish of Trimley St Mary	Keeper's Lane / Bridleway 22 Trimley St Mary (Keeper's Lane Level Crossing) Station Road/Cordy's Lane (Trimley St Mary Level Crossing)

PART 2

NEW LEVEL CROSSINGS TO BE PROVIDED IN SUBSTITUTION
FOR EXISTING LEVEL CROSSINGS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Existing level crossing to be discontinued</i>	<i>(3)</i> <i>New level crossing</i>
County of Suffolk Suffolk Coastal District Parish of Levington and Stratton Hall	Levington Heath Footcrossing (FP1 Strattonhall) between points PS1 and PS 3	Extended footcrossing (by 4.5 metres southwards), straightened with walkway surfaces between points PS1 and PS2
Parish of Trimley St Martin	Number 23 Footcrossing (FP33 Trimley St Martin) between points PS4 and PS6	Extended footcrossing (by 4.5 metres southwards), straightened with walkway surfaces between points PS5 and PS6
	Number 24 Footcrossing (FP29 Trimley St Martin and FP30 Trimley St Martin) between points PS7 and PS8	Extended footcrossing (by 4.5 metres southwards), with walkway surfaces and repositioned whistle boards between points PF7 and PF8

PART 3

LEVEL CROSSINGS TO BE STOPPED UP FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Level crossing to be discontinued</i>	<i>(3)</i> <i>Street to be stopped up</i>
County of Suffolk Suffolk Coastal District Parish of Trimley St Martin	Croft Footcrossing	FP8 Trimley St Martin between points PF1 and PF2
	Gun Lane crossing	Restricted byway 28 (Gun Lane) between points PF5 and PF11

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on works and land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Authorised work</i>
County of Suffolk			
Borough of Ipswich	1, 2, 3, 5A	Provision of worksite	Work No. 1
	8, 9, 10, 12	Provision of access	Work No. 1
Suffolk Coastal District			
Parish of Westerfield	13, 24	Provision of worksite	Ancillary works authorised by the Order at Westerfield
Parish of Nacton	26	Provision of worksite, vehicle turn around and construction area for fabrication of track turnouts	Work No. 2
Parish of Levington	31	Vehicle turnaround area, temporary stockpile spoil area, haul road	Work No. 2
	32, 33, 39, 40	Improvements for temporary access	Work No. 2
	34, 35	Temporary materials storage area	Work No. 2
	38	Haul road, area for earth moving equipment turnback and parking, spoil storage, road lorry loading and parking, queueing and washdown area, site cabins, equipment storage and car parking (and access therefor)	Work No. 2
	41, 42, 43, 44, 45, 48, 49, 50	Temporary highway improvements	Work No. 2
	52	Haul road	Work No. 2
	53, 54	Provision of access, highway improvements	Work No. 2
	55	Provision of access, haul road, area for earth moving equipment turnback and parking, spoil storage, road lorry loading and parking, queueing and washdown area, site	Work No. 2

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on works and land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Authorised work</i>
Parish of Stratton Hall		cabins, equipment storage and car parking	
	56	Haul road, vehicle turnaround and temporary soil stockpile area, area for earth moving equipment turnback and parking, spoil storage, road lorry loading and parking, queueing and washdown area, site cabins, equipment storage and car parking and provision of access	Work No.2, Work No. 3
	59, 60, 63	Temporary highway improvements, road widening and reinforcement	Work No. 2, Work No. 3
	57	Provision of temporary footpath diversion	Work No. 2
Parish of Trimley St Martin	66	Haul road	Work No. 2
	67	Provision of access	Work No. 2
	70, 72	Haul road	Work No. 2
	75	Haul road, vehicle turn around and temporary stockpile spoil area	Work No. 2
	76	Haul road, area for earth moving equipment turnback and parking, spoil storage, road lorry loading and parking, queueing and washdown area, site cabins, equipment storage and car parking and provision of access	Work No.2, Work No. 4
	78, 79, 80, 82	Temporary access improvements, road widening and reinforcement	Work No. 2, Work No. 4
	84	Haul road, area for earth moving equipment turnback and parking, spoil storage, road lorry loading and parking,	Work No. 2

<i>(1) Area</i>	<i>(2) Number of land shown on works and land plans</i>	<i>(3) Purpose for which temporary possession may be taken</i>	<i>(4) Authorised work</i>
		queueing and washdown area, site cabins, equipment storage and car parking and provision of access	
	87	Haul road, vehicle turnaround and fabrication of track turnouts area and provision of access	Work No. 2, Work No. 5, Work No. 6
	88, 90	Highway improvement	Work No. 5, Work No. 6
	95	Haul road, construction vehicle turnaround and temporary soil stockpile area	Work No. 2
	97, 98, 99	Provision of permanent replacement footpath	
	101, 102, 103, 104	Haul road and worksite	Work No. 2
	108	Area for earth moving equipment turnback and parking, spoil storage, road lorry loading and parking, queueing and washdown area, site cabins, equipment storage and car parking and provision of temporary footpath diversion	Work No. 2
	109	Provision of temporary footpath diversion	Work No. 2
	110, 111	Provision of access, temporary highway improvements	Work No. 2
Parish of Trimley St Mary	113, 116, 117	Haul road, environmental protection	Work No. 2
	114, 115	Provision of temporary footpath diversion	Work No. 2
	119	Haul road and all terrain construction vehicle turnaround and fabrication of track turnouts	Work No. 2

PROVISIONS RELATING TO STATUTORY UNDERTAKERS, ETC.

Apparatus of statutory undertakers etc. on land acquired

1.—(1) Sections 271 to 274 of the 1990 Act (power to extinguish rights of statutory undertakers etc. and power of statutory undertakers etc. to remove or re-site apparatus) shall apply in relation to any land acquired or appropriated by the undertaker under this Order subject to the following provisions of this paragraph; and all such other provisions of that Act as apply for the purposes of those provisions (including sections 275 to 278, which contain provisions consequential on the extinguishment of any rights under sections 271 and 272, and sections 279(2) to (4), 280 and 282, which provide for the payment of compensation) shall have effect accordingly.

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

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

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

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

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

shall be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by him, in consequence of the removal, for the purpose of making his drain or sewer communicate with any other public sewer or with a private sewerage 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 3 of the 1991 Act applies.

(6) In this paragraph—

“public communications provider” has the same meaning as in section 151(1) 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 stopped up streets

2.—(1) Where a street is stopped up under article 8 (stopping up of streets), article 17 (provision of new level crossings in substitution for existing level crossings) or article 18 (stopping up of level crossings) any statutory utility whose apparatus is under, in, upon, 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 8 (stopping up of streets), article 17 (provision of new level crossings in substitution for existing level crossings) or article 18 (stopping up of level crossings) any statutory utility whose apparatus is under, in, upon, over, along or across the street may, and if reasonably requested to do so by the undertaker shall—

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

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

(a) 2003 c. 21.

(b) 1980 c. 66.

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

- (a) the execution of the 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 the relocation works.

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

- (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this paragraph would be payable to the statutory utility by virtue of sub-paragraph (3) 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 3 of the 1991 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 undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this paragraph—

“apparatus” has the same meaning as in Part 3 of the 1991 Act,

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

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

Railway and navigation undertakings

3.—(1) Subject to the following provisions of this paragraph, the powers under article 7 (power to execute street works) to break up or open a street shall not be exercisable where the street, not being a highway maintainable at public expense (within the meaning of the Highways Act 1980)—

- (a) is under the control or management of, or is maintainable by, railway or tramway undertakers or a navigation authority; or

(b) forms part of a level crossing belonging to any such undertakers or to such an authority or to any other person,
except with the consent of the undertakers or authority or, as the case may be, of the person to whom the level crossing belongs.

(2) Sub-paragraph (1) shall not apply to the carrying out under this Order of emergency works, within the meaning of Part 3 of the 1991 Act.

(3) A consent given for the purpose of sub-paragraph (1) may be made subject to such reasonable conditions as may be specified by the person giving it but shall not be unreasonably withheld.

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

PART 1

PROTECTION OF NETWORK RAIL INFRASTRUCTURE LIMITED

1. The following provisions of this Schedule shall have effect unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 14, any other person on whom rights or obligations are conferred by that paragraph.

2. In this Part of this Schedule—

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

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

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

“railway operational procedures” means procedures specified under any access agreement (as defined in the 1993 Act) or station lease;

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

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

3.—(1) Where under this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail shall—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised works pursuant to this Order.

4.—(1) The undertaker shall not exercise the powers conferred by article 22 (power to acquire land) or section 11(3) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

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

(3) The undertaker shall not under the powers of this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.

(4) The undertaker shall not exercise the powers conferred by section 271 or 272 of the 1990 Act, as applied by Schedule 9, in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

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

5.—(1) The undertaker shall before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work shall not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) shall not be unreasonably withheld or delayed, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated his disapproval of those plans and the grounds of his disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate his approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further period of 28 days the engineer has not intimated his approval or disapproval, he shall be deemed to have approved the plans as submitted.

(3) If by the expiry of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail 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 Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail shall construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph and under the supervision (where appropriate and if given) of the undertaker.

(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 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 Network Rail or the services of operators using the same (including any relocation, decommissioning and removal of works, apparatus and equipment necessitated by a 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 Network Rail or by the undertaker, if Network Rail so desires, and such protective works shall be carried out at the expense of the undertaker, in either case with all reasonable dispatch and the undertaker shall not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to his reasonable satisfaction.

6.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) shall, when commenced be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer; and
- (c) in such manner as to cause as little damage as is possible to railway property and as little interference as is possible with the conduct of traffic on the railways of Network Rail.

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

(3) Without prejudice to any other operational railway requirement, the undertaker shall give to the engineer not less than 180 days' notice of its intention to commence the construction of a specified work and also, except in emergency (when it shall give such notice as may be reasonably practicable), 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.

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

7. The undertaker shall—

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

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

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

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail elects itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railway of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail shall assume the construction of that specified work and the undertaker shall, notwithstanding any such approval of the specified work under paragraph 5(1), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by means of the execution by Network Rail of that specified work.

(3) The engineer shall, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

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

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work and otherwise in connection with the implementation of the provisions of this Schedule;
- (c) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may, in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

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

12. The undertaker 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 Network Rail unless it shall have first consulted Network Rail and it shall comply with Network Rail'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.

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

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

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

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

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

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

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail shall promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (1) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail 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) incurred by each train operator as a consequence of any restriction of the use of Network Rail'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); and

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

15. Network Rail shall, on receipt of a request from the undertaker, from time to time provide to the undertaker at the cost of the undertaker, written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Schedule (including the amount of the relevant costs mentioned in paragraph 14) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Schedule (including any claim relating to those relevant costs).

16. In the assessment of any sums payable to Network Rail 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 Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Schedule or increasing the sums so payable.

17. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

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

PART 2

PROTECTION OF NATIONAL GRID GAS PLC

Interpretation

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

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

“apparatus” means any mains, pipes, pressure governors, ventilators, cathodic protection, cables or other apparatus belonging to or maintained by the company for the purposes of the conveyance or storage of gas and includes any structure for the lodging therein of apparatus or for giving access to such apparatus, but the provisions of paragraphs 20 to 28 do not apply to apparatus in respect of which the relations between the undertaker and the company are regulated by the provisions of Part 3 of the 1991 Act;

“the company” means National Grid Gas plc, a gas transporter within the meaning of Part 1 of the Gas Act 1986^(a) and includes any person succeeding the company as a gas transporter or any other successor in title, and any contractor appointed by the company to carry out its obligations under this agreement;

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

“functions” includes powers and duties;

“goods” includes gas conveyed by a gas transporter;

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

“plans” includes sections, specifications and method statements.

(2) The provisions of Schedule 9 (provisions relating to statutory undertakers, etc.) shall not apply in relation to apparatus to which this Part of this Schedule applies.

Temporarily stopped up streets, etc: maintenance of apparatus

19.—(1) Notwithstanding the temporary stopping up or diversion of any highway pursuant to article 10 (temporary stopping up of streets), the company shall be at liberty at all times to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain or use any apparatus which at the time of the stopping up or diversion was in that highway.

(2) Sub-paragraph (1) shall not apply where alternative apparatus has been installed to replace the apparatus in question and is in operation or the apparatus is otherwise redundant.

Acquisition of apparatus

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

^(a) 1986 c. 44. A new section 7 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.

21.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus shall not be removed, and any right of the company to maintain that apparatus in that land shall not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the company.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it shall give to the company no less than 56 days' written notice of that requirement, together with plans 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 conferred by this Order the company reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (3), afford to the company the necessary facilities and rights (including legal easements satisfactory to the company) for the construction of alternative apparatus in other land of the undertaker and thereafter for the retention, use, maintenance and renewal of that apparatus.

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

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

(5) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between the company and the undertaker or, in default of agreement settled by arbitration pursuant to article 52 (arbitration).

(6) The company shall, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 52 (arbitration), and after the grant to the company of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed with all reasonable dispatch to construct and bring into operation the alternative apparatus and thereafter to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(7) Notwithstanding anything in sub-paragraph (6), if the undertaker gives notice in writing to the company that it desires itself to execute any part of so much of the work necessary in connection with the construction of the alternative apparatus, or the removal of the apparatus required to be removed, as will take place in any land of the undertaker, that work may, with the prior written consent of the company (which shall not be unreasonably withheld and shall be subject to any such conditions as are reasonable and proper to protect the apparatus), instead of being executed by the company be executed by the undertaker in accordance with plans, in a position and at a cost agreed between the company and the undertaker or, in default of agreement, determined by arbitration pursuant to article 52 (arbitration) with all reasonable despatch under the superintendence, if given, and to the reasonable satisfaction, of the company.

(8) Within 14 days after the work of the type referred to in sub-paragraph (7) has been agreed between the undertaker and the company or determined by arbitration in accordance with article 52 (arbitration) and after the grant to or obtaining by the company of any such facilities and rights as referred to in sub-paragraphs (2) and (3), the company shall supply the undertaker with the names of at least three approved contractors (which may include the company or a subsidiary of the company) to carry out any part of the work necessary, and the undertaker shall be responsible for the engagement of the contractor of its choice from the names so supplied on such terms and conditions as the undertaker thinks fit.

(9) If the company does not provide the names of the contractors within the period required by sub-paragraph (8), the undertaker shall be entitled to carry out the necessary work using such contractor as it thinks fit, being a contractor who appears to the undertaker, following reasonable enquiry of the company, to be competent and suitably qualified to carry out that work.

(10) In carrying out any work under sub-paragraph (7) the undertaker shall comply with all statutory obligations which would have been applicable had the works been carried out by the company.

(11) On completion of any work under sub-paragraph (7) the undertaker shall provide to the company plans and any other documentation reasonably required by the company (in format to be approved by the company) for the purpose of the future identification and location of apparatus.

(12) Nothing in sub-paragraph (7) shall authorise the undertaker to execute the actual placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 500 millimetres of the apparatus where the apparatus is operating or only capable of operating at below 7 bar pressure or within 3,000 millimetres of the apparatus where the apparatus is operating or capable of operating at or in excess of 7 bar pressure, unless so authorised by the company acting reasonably.

22.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to the company facilities and rights for the construction, use, maintenance and renewal, in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the undertaker and the company or in default of agreement settled by arbitration in accordance with article 52 (arbitration).

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

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the 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 undertaker or the operation of 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 any terms and conditions applicable to the apparatus for which the alternative apparatus is to be substituted.

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

Protection of apparatus

23.—(1) Not less than 56 days before commencing the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 21(2), the undertaker shall submit to the company plans of the works to be executed.

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

(3) Any requirements made by the company under sub-paragraph (2) shall be made within a period of 42 days beginning with the date on which the plans under sub-paragraph (1) are received by it.

(4) If the company in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, the foregoing provisions of this Part of this Schedule shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 21(2).

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

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

Stopped up highways: access to apparatus

24. Where, by reason of this Order, any part of any highway in which any apparatus is situated ceases to be part of a highway the company may exercise the same rights of access to such apparatus as it enjoyed immediately before the coming into force of this Order and the undertaker shall grant to the company legal easements satisfactory to the company in respect of such apparatus and access thereto but nothing in this paragraph shall affect any right of the company or of the undertaker to require removal of such apparatus under this Part of this Schedule or the power of the undertaker to execute works in accordance with paragraphs 21 and 23.

Repayment of expenses

25.—(1) Subject to the following provisions of this paragraph, the undertaker shall repay to the company the reasonable expenses incurred by the company in, or in connection with—

- (a) the inspection, removal and relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus under any provision of this Part of this Schedule (including any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or exercise of statutory powers for such apparatus), and in connection with the cost of the carrying out by the company of any connection work;
- (b) the cutting off of any apparatus from any other apparatus, or the making safe of any redundant apparatus in consequence of the exercise by the undertaker of any power conferred by the Order;
- (c) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the exercise by the undertaker of any power conferred by the Order; and
- (d) any other work or thing rendered reasonably necessary in consequence of the exercise by the undertaker of any such power;

within 60 days of being notified by the company that it has incurred such expenses.

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

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

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions, or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

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

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

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

Indemnity

26.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, maintenance or failure, including subsidence, resulting from any of the works referred to in paragraph 21(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 the company or there is any interruption in any service provided or in the supply or conveyance of any goods by the company, the undertaker shall—

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

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

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

(3) The company shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without the consent of the undertaker which, if it withholds such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand with such assistance from the company as may be reasonably necessary.

Payment for redundant apparatus

27.—(1) Where, by reason of the stopping up of any highway pursuant to this Order, any apparatus belonging to the company and laid or placed in such highway or elsewhere is rendered derelict or unnecessary, the undertaker shall, subject to sub-paragraph (2), pay to the company the value of such apparatus (which shall then become the property of the undertaker) and the reasonable cost of and any costs incidental to the cutting off of such apparatus from any other apparatus, and of and incidental to the execution or doing of any works or things rendered necessary or expedient by reason of such apparatus being so rendered derelict or unnecessary.

(2) The undertaker shall not under the provisions of this paragraph be required to pay to the company the value of any apparatus rendered derelict or unnecessary if, to the reasonable satisfaction of the company, other apparatus has at the expense of the undertaker been provided and laid and made ready for use in substitution for the apparatus so rendered derelict or unnecessary.

Existing enactments and agreements

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

PART 3

PROTECTION OF CABLE AND WIRELESS PLC

29.—(1) The provisions of this Part of this Schedule shall have effect for the protection of C&W unless it is otherwise agreed in writing between the undertaker and C&W.

(2) In this Part of this Schedule—

“C&W” means Cable & Wireless Plc; and

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

30. The temporary stopping up or diversion of any street under article 10 (temporary stopping up of streets) shall not affect any right of a public communications provider under paragraph 9 of the Telecommunications Code (“the Code”), contained in Schedule 2 to the Telecommunications Act 1984^(b) as amended by Schedule 3 to the Communications Act 2003, in respect of any apparatus which at the time of the temporary stopping up or diversion is in that street.

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

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

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

^(a) 2003 c. 21.

^(b) 1984 c. 12.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises the Felixstowe Dock and Railway Company to construct and operate an additional railway line adjacent to part of the existing Felixstowe branch railway line in the Suffolk Coastal District, Suffolk and to construct and operate an improved marshalling yard in the vicinity of Ipswich Railway Station in the Borough of Ipswich, Suffolk.

A copy of the works and land plans, the sections and the book of reference may be inspected at the offices of the Felixstowe Dock and Railway Company, Port of Felixstowe, Tomline House, The Dock, Felixstowe, Suffolk IP11 3SY.

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