

2009 No. 2364

TRANSPORT AND WORKS, ENGLAND

TRANSPORT, ENGLAND

**The London Underground (Victoria Station Upgrade) Order
2009**

Made - - - - 28th August 2009

Coming into force - - 18th September 2009

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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 2006(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The Secretary of State, having considered the objections made and not withdrawn and the report of the person who held the inquiry, has determined to make an Order giving effect to the proposals comprised in the application with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 the Secretary of State’s opinion do not make any substantial change in the proposals.

Notice of the Secretary of State’s determination was published in the London Gazette on 7th August 2009.

Accordingly, the Secretary of State, in exercise of the powers conferred by sections 1 and 5 of, and paragraphs 1 to 4, 7, 8, 10, 11 and 16 of Schedule 1 to, the 1992 Act, makes the following Order:—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the London Underground (Victoria Station Upgrade) Order 2009 and shall come into force on 18th September 2009.

Interpretation

2.—(1) In this Order—

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

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

“the 1973 Act” means the Land Compensation Act 1973(e);

“the 1980 Act” means the Highways Act 1980(f);

(a) S.I. 2006/1466.

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

(c) 1961 c. 33.

(d) 1965 c. 56.

(e) 1973 c. 26.

(f) 1980 c. 66.

“the 1981 Act” means the Acquisition of Land Act 1981(a);

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

“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, or any part of them;

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

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

“carriageway” has the same meaning as in the 1980 Act;

“the Company” means London Underground Limited, a company regulated by the Companies Act 1985(e) and registered in England and Wales under number 01900907;

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means but while in electronic form;

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

“footway” has the same meaning as in the 1980 Act;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

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

“the limits of deviation” means the limits of lateral and vertical deviation for the scheduled works mentioned in article 5 (power to deviate);

“Little Ben” means the clock tower at the junction of Victoria Street, Wilton Road and Vauxhall Bridge Road;

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

“maintenance” shall be construed accordingly;

“the Order limits” means the permanent limits and the temporary limits;

“owner”, in relation to land, has the same meaning as in the 1981 Act;

“the permanent limits” means the limits of deviation and the limits of land to be acquired or used permanently as shown on the works plans and the land plans respectively and described in the book of reference;

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

“the sections” means the sections included in the works plans;

“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 temporary limits” means the limits of land to be acquired or used (street works and temporary use) as shown on the land plans, described in the book of reference and in relation to certain land specified in columns (1) and (2) of Schedule 6 (land of which temporary possession may be taken);

(a) 1981 c. 67.
(b) 1984 c. 27.
(c) 1990 c. 8.
(d) 1991 c. 22.
(e) 1985 c. 6.

“the traffic regulation plan” means the plan certified by the Secretary of State as the traffic regulation plan for the purposes of this Order;

“the tribunal” means the Upper Tribunal; and

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

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

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

(4) All distances, directions, lengths, points and areas 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, length, point and area, and distances between points on a scheduled work shall be taken to be measured along the scheduled work.

Application of the 1991 Act

3.—(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 1980 Act (dual carriageways and roundabouts) or section 184 of that Act (vehicle crossings).

(2) In Part 3 of the 1991 Act references, in relation to major highway works, to the highway authority concerned shall, in relation to works which are major transport works by virtue of paragraph (1), be construed as references to the Company.

(3) The following provisions of the 1991 Act shall not apply in relation to any works executed under the powers conferred by this Order—

- section 56 (directions as to timing);
- section 56A (power to give directions as to placing of apparatus);
- section 58 (restrictions following substantial road works);
- section 58A (restriction on works following substantial street works);
- section 73A (power to require undertaker to re-surface street);
- section 73B (power to specify timing etc. of re-surfacing);
- section 73C (materials, workmanship and standard of re-surfacing);
- section 78A (contributions to costs of re-surfacing by undertaker); and
- Schedule 3A (restriction on works following substantial street works).

(4) The provisions of the 1991 Act mentioned in paragraph (5) (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 Company under the powers conferred by article 9 (temporary stopping up and diversion of streets) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act referred to in paragraph (4) are—

- section 54 (advance notice of certain works);
- section 55 (notice of starting date of works);
- section 57 (notice of emergency works);

section 59 (general duty of street authority to co-ordinate works);
section 60 (general duty of undertakers to co-operate);
section 68 (facilities to be afforded to street authority);
section 69 (works likely to affect other apparatus in the street);
section 75 (inspection fees);
section 76 (liability for cost of temporary traffic regulation); and
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.

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) 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.

(7) Nothing in article 11 (construction and maintenance of altered or diverted streets) of this Order shall—

- (a) prejudice the operation of section 87 of the 1991 Act (prospectively maintainable highways), and the Company shall not by reason of any duty under that article to maintain a street be taken to be the 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 as respects which the provisions of Part 3 of the 1991 Act apply.

PART 2

WORKS PROVISIONS

Principal powers

Power to construct and maintain works

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

(2) Subject to article 5 (power to deviate), the scheduled works may only be constructed in the lines or situations shown on the works plans and in accordance with the levels shown on the sections.

(3) Subject to paragraph (7), the Company 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 any street furniture or apparatus, including mains, sewers, drains, pipes, cables and lights;
- (b) works to erect and construct such offices, and other buildings, machinery, apparatus, and other works, and conveniences as the Company thinks fit;
- (c) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised works;
- (d) facilities and works for the benefit or protection of land or premises affected by the authorised works; and
- (e) felling of trees.

(4) Without prejudice to the generality of paragraph (3), the Company may, in connection with the construction of the scheduled works remove, temporarily store and reinstate Little Ben.

(5) Subject to paragraph (7) the Company may carry out and maintain 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.

(6) The Company may remove any works constructed by it pursuant to this Order which have been constructed as temporary works or which it no longer requires.

(7) Paragraphs (3) and (5) shall only authorise the carrying out or maintenance of works within the Order limits.

Power to deviate

5.—(1) In constructing or maintaining any of the scheduled works, the Company may—

- (a) deviate laterally from the lines or situations shown on the works plans within the limits of deviation shown on those plans; and
- (b) deviate vertically from the levels shown on the sections—
 - (i) subject to paragraphs (2) and (3) to any extent not exceeding 3 metres upwards in respect of any part of the scheduled works shown on the works plans as being above ground level; and
 - (ii) to any extent downwards as may be found to be necessary or convenient.

(2) In constructing and maintaining Work Nos. 4A, 4C, 4D, 4E, 4G, 4H and 6 the Company may deviate vertically upwards to any extent provided that the work remains more than 4.5 metres below the level of the surface of the land but not so as to encroach into any basement, cellar or vault.

(3) In constructing and maintaining Work Nos. 4F, 4I, 4J and 4K the Company may deviate vertically upwards within the limits of deviation shown on the section or sections relating to the relevant work.

(4) In this article “level of the surface of the land” means—

- (a) in the case of any land on which a building is erected, the level of the surface of the ground adjoining the building; or
- (b) in any other case, ground surface level.

Streets

Power to alter layout, etc., of streets

6.—(1) The Company may for the purposes of the authorised works alter the layout of any street within the Order limits and the layout of any street having a junction with such a street and without prejudice to this power the Company may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footway or verge within the street;
- (b) alter the level or increase the width of any such kerb, footway or verge; and
- (c) carry out works for the provision or alteration of parking places, loading bays, bus stop clearways and bus laybys.

(2) The powers in paragraph (1) shall not be exercised without the consent of the street authority, but such consent shall not be unreasonably withheld.

Power to execute street works

7.—(1) The Company 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), including works necessary to prepare the ground for tunnelling or other works.

(2) 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 Company may, in connection with the authorised works, stop up the street specified in column (2) of Schedule 3 (street to be stopped up) to the extent specified in column (3) of that Schedule.

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

- (a) all rights of way over or along it shall be extinguished; and
- (b) the Company may appropriate and use for the purposes of its undertaking so much of the site of the street so stopped up.

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

(4) This article is subject to paragraph 2 of Schedule 8 (provisions relating to statutory undertakers, etc.) and paragraph 3 of Schedule 10 (for protection of specified undertakers).

Temporary stopping up and diversion of streets

9.—(1) The Company may, during and for the purposes of the execution of the authorised works 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 Company may use any street stopped up under the powers conferred by this article as a temporary working site.

(3) The Company 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 Company may exercise the powers conferred by this article in relation to the streets specified in column (2) of Schedule 4 (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the traffic regulation plan and set out in column (3) of that Schedule.

(5) The power conferred by paragraph (4) shall not be used to stop up the carriageway of Bressenden Place such that it is not available for the passage of traffic until a temporary alternative route for the passage of such traffic as is reasonably likely to have used that part of Bressenden Place to be stopped up is provided between points marked A and B on the traffic regulation plan and Victoria Street.

(6) The Company shall following the provision of the temporary alternative route referred to in paragraph (5) maintain that route to the reasonable satisfaction of the street authority and that route (or any subsequent temporary alternative route that meets the requirements of paragraph (5)) shall remain until such time as the temporary stopping up and diversion of Bressenden Place as authorised by paragraph (4) has ended.

(7) The Company shall not exercise the powers conferred by this article—

- (a) in relation to any street specified as mentioned in paragraph (4) or (5), 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.

(8) 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.

Access to works

10. The Company may, for the purposes of the authorised works with the approval of the highway authority, such approval not to be unreasonably withheld, form and lay out such means of access or improve existing means of access, at such locations within the Order limits as the Company reasonably requires for the purposes of the authorised works.

Construction and maintenance of altered or diverted streets

11.—(1) Where a street is altered or diverted under this Order, or is reinstated following its temporary diversion, the altered, diverted or reinstated 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 Company 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.

(2) In any action against the Company in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the Company 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.

(3) For the purposes of a defence under paragraph (2), 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;
- (d) whether the Company 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; and
- (e) where the Company could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

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

Agreements with street authorities

12.—(1) A street authority and the Company may enter into agreements with respect to—

- (a) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (b) any stopping up, alteration, diversion or reinstatement of a street under the powers conferred by this Order; or
- (c) the execution in the street of any of the works referred to in article 7 (power to execute street works).

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

- (a) provide 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.

Supplemental powers

Discharge of water

13.—(1) The Company may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction, operation 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 power under 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 Company 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.

(4) The Company 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 Company 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 or any other potentially polluting material.

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

(7) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency or a local authority; and
- (b) other expressions, excluding watercourses, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

Protective works to buildings

14.—(1) Subject to the following provisions of this article, the Company may at its own expense and from time to time carry out such protective works to any building lying within the protective works limits as the Company 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 (other than works authorised by this article); or
- (b) after the completion of the construction of that part of the authorised works (other than works authorised by this article), 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 Company may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(a) 1991 c. 56.
(b) 1991 c. 57.

(4) For the purpose of carrying out protective works under this article to a building the Company 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 any 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 Company 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.

(6) Where 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 42 (arbitration).

(7) The Company 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 within 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 works,

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

(9) Without prejudice to article 41 (no double recovery), nothing in this article shall relieve the Company 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—

- (a) “protective works”, in relation to a building, means—
 - (i) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the construction, maintenance or operation of the authorised works; and
 - (ii) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, maintenance or operation of the authorised works; and
- (b) “the protective works limits” means the limits of land for protective works shown on the land plans.

Planning permission: supplementary matters

15. 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 survey and investigate land, etc.

16.—(1) The Company may for the purposes of this Order—

- (a) survey or investigate any land 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 Company 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 sub-paragraph (a), carry out archaeological investigations on any such land;
- (d) place on, leave on and remove from the land apparatus for use in connection with the exercise of any of the powers conferred by sub-paragraphs (a) to (c); and
- (e) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (d).

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

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

- (a) shall, if so required, before or after entering the land produce written evidence of authority to do so; and
- (b) may take onto the land 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 Company shall pay compensation for any loss or damage occasioned by the exercise of the powers conferred by this article to the owners and occupiers of the land, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

17.—(1) The Company may acquire compulsorily so much of the land shown on the land plans as lying within the permanent limits as may be required for or in connection with the authorised works and may use any land so acquired for those purposes or for any other purposes that are ancillary to its railway undertaking.

(2) This article is subject to articles 22 (power to acquire land limited to subsoil lying more than 4.5 metres beneath surface) and 24 (temporary use of land for construction of works).

Application of Part 1 of the Compulsory Purchase Act 1965

18.—(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 1981 Act 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

19.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(a) shall apply to the Company as if this Order were a compulsory purchase order.

(2) In its application by virtue of paragraph (1), the Compulsory Purchase (Vesting Declarations) Act 1981 shall have effect with the following modifications.

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

“(1) Before making a declaration under section 4 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, subsections (5) and (6) shall be omitted and at the end there shall be substituted—

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

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or reversion; or
- (b) that person 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 by article 18 (application of Part 1 of the Compulsory Purchase Act 1965).

Power to acquire new rights

20.—(1) The Company may compulsorily acquire such easements or other rights over any land within the permanent limits as may be required for any purpose for which that land may be acquired, 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 5 (modification of compensation and compulsory purchase enactments for creation of new rights)),

(a) 1981 c. 66.

where the Company acquires a right over land under paragraph (1) the Company shall not be required to acquire a greater interest in that land.

(3) Schedule 5 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.

Powers to acquire subsoil only

21.—(1) The Company may compulsorily acquire so much of, or such rights in, the subsoil of the land within the permanent limits as may be required for any purpose for which that land may be acquired instead of acquiring the whole of the land.

(2) Where the Company acquires any part of, or rights in, the subsoil of land under paragraph (1) the Company shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) shall not prevent article 28 (acquisition of part of certain properties) from applying where the Company acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Power to acquire land limited to subsoil lying more than 4.5 metres beneath surface

22.—(1) This article applies to the land specified in Schedule 7 (land of which only subsoil more than 4.5 metres beneath surface may be acquired).

(2) In the case of land to which this article applies, the Company's powers of compulsory acquisition under article 17 (power to acquire land) shall be limited to the acquisition of, or rights in, so much of the subsoil of the land as may be required for the purposes of the authorised works.

(3) Where the Company acquires any part of, or rights in, the subsoil of the land to which this article applies, it shall not be required to acquire a greater interest in the land or an interest in any other part of it.

(4) References in this article to the subsoil of land are references to the subsoil lying more than 4.5 metres beneath the level of the surface of the land; and for this purpose "level of the surface of the land" means—

- (a) in the case of any land on which a building is erected, the level of the surface of the ground adjoining the building; or
- (b) in any other case, ground surface level.

Rights under or over streets

23.—(1) The Company may enter upon and appropriate so much of the surface, subsoil of, or air-space over, any street shown on the land plans and described in the book of reference as may be required for the purposes of the authorised works and may use the surface, subsoil and air-space for those purposes or any other purpose ancillary to its railway undertaking.

(2) Subject to paragraph (4), the power under paragraph (1) may be exercised in relation to a street without the Company 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 Company 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, the amount of such 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 on to 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

24.—(1) The Company may, in connection with the carrying out of the scheduled works, enter upon and take temporary possession of the land specified in columns (1) and (2) of Schedule 6 (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 scheduled works specified in column (4) of that Schedule.

(2) Not less than 14 days before exercising the powers conferred by paragraph (1) the Company shall serve notice of the intended entry on the owners and occupiers of the land.

(3) The Company may not, without the agreement of the owners of the land, remain in possession of any land of which temporary possession has been taken 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 6.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the Company shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the Company shall not be required to replace a building removed under this article.

(5) The Company 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 41 (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 Company shall not be precluded from—

- (a) acquiring new rights over any part of that land under article 20 (power to acquire new rights); or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 21 (power to acquire subsoil only) or in accordance with article 22 (power to acquire land limited to subsoil lying more than 4.5 metres beneath surface).

(9) Where the Company 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 18(1) (application of Part 1 of the Compulsory Purchase Act 1965).

Temporary use of land for maintenance of works

25.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any of the scheduled works, the Company 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 or securing the safe operation of any such work; 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 Company 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 Company shall serve notice of the intended entry on the owners and occupiers of the land.
- (4) The Company may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance works for which possession of the land was taken.
- (5) Before giving up possession of land of which temporary possession has been taken under this article, the Company shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.
- (6) The Company 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 41 (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 Company takes possession of land under this article, it shall not be required to acquire the land or any interest in it.
- (10) The powers conferred by this article shall not be exercised in relation to any street without the consent of the street authority, which shall not be unreasonably withheld.
- (11) 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 18(1) (application of Part 1 of the Compulsory Purchase Act 1965).
- (12) 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

26.—(1) In assessing the compensation (if any) payable to any person on the acquisition from that person of any land or interest in 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 that person 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

27.—(1) In assessing the compensation payable to any person in respect of the acquisition from that person 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 that person by reason of the construction of the authorised works.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 20 (powers 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 that person 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

28.—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 18 (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 Company a counter-notice objecting to the sale of the land subject to the notice to treat which states that the owner 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 Company agrees to take the land subject to the counter-notice, be referred to the tribunal.

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

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

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

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

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

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

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

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

the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the Company is authorised to acquire compulsorily under this Order.

(8) If the Company 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 Company 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 Company 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 to the owner compensation for any loss or expense occasioned to the owner 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 Company shall pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

Extinction or suspension of private rights of way

29.—(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 Company, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the Company under section 11(1) of the 1965 Act,

whichever is sooner.

(2) All private rights of way over land owned by the Company which is within the permanent limits and is required for the purposes of this Order, shall be extinguished on the appropriation of the land for any of those purposes by the Company.

(3) All private rights of way over land of which the Company takes temporary possession under this Order shall be suspended and unenforceable for as long as the Company 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 8 (provisions relating to statutory undertakers, etc.) applies.

Time limit for exercise of powers of acquisition

30.—(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 18 (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, as applied by article 19 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The power conferred by article 24 (temporary use of land for construction of works) to enter upon and take temporary possession of land shall cease at the end of the period mentioned in paragraph (1); but this paragraph shall not prevent the Company from remaining in possession of land in accordance with article 24 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

PROTECTIVE PROVISIONS

Statutory undertakers, etc.

31. The provisions of Schedule 8 (provisions relating to statutory undertakers, etc.) shall have effect.

For protection of Network Rail

32. The provisions of Schedule 9 (for protection of Network Rail) shall have effect.

For protection of specified undertakers

33. The provisions of Schedule 10 (for protection of specified undertakers) shall have effect.

PART 5

MISCELLANEOUS AND GENERAL

Traffic regulation

34.—(1) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, which consent shall not be unreasonably withheld, the Company may, at any time for the purposes of the construction of the authorised works prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles in the manner specified in Schedule 11 (traffic regulation) on those roads specified in column (1) and along the lengths and between the points specified in column (2) of that Schedule.

(2) Without prejudice to the specific powers conferred by paragraph (1) but subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, which consent shall not be unreasonably withheld, the Company may, in so far as may be necessary or expedient for the purposes of, in connection with, or in consequence of the construction of the scheduled works, at any time prior to the opening of the scheduled works for use—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road;
- (c) authorise the use as a parking place of any road;
- (d) make provision as to the direction or priority of vehicular traffic on any road; and

- (e) permit or prohibit vehicular access to any road,
either at all times or at times, on days or during such periods as may be specified by the Company.
- (3) The Company shall not exercise the powers of paragraphs (1) and (2) unless it has—
- (a) given not less than 4 weeks' notice in writing of its intention so to do to the chief officer of police and to the traffic authority in whose area the road is situated; and
 - (b) advertised its intention in such manner as the traffic authority may specify in writing within 7 days of its receipt of notice of the Company's intention in the case of sub-paragraph (a).
- (4) Any prohibition, restriction or other provision made by the Company under paragraph (1) or (2) shall—
- (a) have effect as if duly made by, as the case may be—
 - (i) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or
 - (ii) the local authority in whose area the road is situated as an order under section 32 of the 1984 Act,and the instrument by which it is effected may specify savings and exemptions (in addition to those mentioned in Schedule 11 (traffic regulation)) to which the prohibition, restriction or other provision is subject; and
 - (b) be deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004^(a) (road traffic contraventions subject to civil enforcement).
- (5) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the Company from time to time by subsequent exercise of the powers of paragraph (2) at any time prior to the opening of the scheduled works for use.
- (6) Before complying with the provisions of paragraph (3) the Company shall consult the chief officer of police and the traffic authority in whose area the road is situated.
- (7) Expressions used in this article and in the 1984 Act shall have the same meaning in this article as in that Act.

Street traders

35.—(1) Where the Company considers that the carrying on within any part of a street within the Order limits by the holder of a street trading licence of the trading permitted by that licence would prevent or materially impede the construction or maintenance of the scheduled works, the Company may—

- (a) revoke that licence if it only permits trading in a part of a street in which the authorised works are to take place; or
- (b) with the consent of the Council, vary the conditions on which that licence is granted and any standard conditions imposed under section 10 (standard conditions) of the 1999 Act.

(2) The conditions on which that licence is granted and any standard conditions imposed under section 10 of the 1999 Act may be varied by the Company under paragraph (1) so that the licence permits trading in a street or part of a street beyond the areas in which the authorised works are to take place.

(3) The Company shall serve written notice of any such revocation or variation on the licence-holder in question not less than 28 days before the revocation or variation is to take effect.

(4) Where the Company revokes a street trading licence under this article, the Council may remit or refund, as it considers appropriate, the whole or a part of—

- (a) any fee paid for the grant or variation of the licence; or
- (b) any charges made by the Council under section 22 (fees and charges) of the 1999 Act.

(a) 2004 c. 18.

(5) No legal proceedings whatever may be taken against the Council in relation to any consent given under paragraph (1)(b) except where the Council has acted negligently in giving that consent.

(6) The Company shall pay compensation to any person who suffers any loss or damage from the exercise of the powers conferred by paragraph (1) and in assessing the amount of any such compensation there shall be taken into account any money paid to that person pursuant to paragraph (4).

(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) In this article—

“the 1999 Act” means the City of Westminster Act 1999(a);

“the Council” means Westminster City Council in relation to a street trading licence applying to its area, and includes the Council's employees, agents and contractors; and

“street trading licence” means a licence to trade in a street granted to any person by the Council pursuant to section 9 (street trading licences) of the 1999 Act and includes a temporary licence granted pursuant to section 21 (temporary licences) of that Act.

Obstruction of construction of authorised works

36. Any person who, without reasonable excuse—

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

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

Disclosure of confidential information

37. A person who—

- (a) enters a manufactory, workshop or workplace in pursuance of the provisions of article 14 (protective works to buildings) or article 16 (power to survey and investigate land, etc.); and
- (b) discloses to any person any information obtained pursuant to sub-paragraph (a) and 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 that person's performance of a duty in connection with the purposes for which the person was authorised to enter the land.

Defence to proceedings in respect of statutory nuisance

38.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(b) (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 Company for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works and that the nuisance is attributable to the carrying out of works which are being carried

(a) 1999 c. i.
(b) 1990 c. 43.

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 operation of the works authorised by this Order 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 Company for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works.

(3) The provisions of this article are without prejudice to any rule of common law having similar effect.

Certification of plans, etc.

39. The Company shall, as soon as practicable after the making of this Order, submit copies of the book of reference, the works plans, the land plans and the traffic regulation plan to the Secretary of State for certification that they are true copies of, respectively, the book of reference, the works plans, the land plans and the traffic regulation plan referred to in this Order; and a document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

40.—(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(b) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person 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, the last known address of that person 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 the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

(a) addressing it to that person 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.

(a) 1974 c. 40.

(b) 1978 c. 30.

(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 only where the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission 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 the recipient 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) Any consent to the use of electronic communication given by a person may be revoked by that person 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) that person shall give notice in writing or by electronic transmission revoking any consent given by that person 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

41. 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, or under two or more different provisions of this Order.

Arbitration

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

Signed by authority of the Secretary of State for Transport

28th August 2009

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

SCHEDULES

SCHEDULE 1

Articles 2(1) and 4

SCHEDULED WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of Work</i>	<i>(3)</i> <i>Description of Work</i>
City of Westminster	Work No.1	An extension of the existing sub-surface ticket hall (the extension comprising an area of 1,154 square metres) commencing at a point within the National Rail Victoria station 7 metres south of the building line of its northern façade and 33 metres west of the corner of that façade on Wilton Road and terminating at a point 15 metres south of the junction of Terminus Place with Wilton Road.
	Work No.2	A passenger lift from the existing sub-surface ticket hall connecting with the National Rail Victoria station concourse commencing at a point 47 metres west of the corner of the National Rail station northern façade at Wilton Road and terminating at a point 11 metres south of it.
	Work No.3	Widening of existing stairs beneath the canopy fronting the National Rail Victoria station commencing at a point 63 metres west of the corner of the National Rail station northern façade at Wilton Road and terminating at a point 10 metres south of it.
	Work No.4A	A passenger subway and escalator shaft, passenger lift and stairs commencing at a point 15 metres south of the junction of Terminus Place with Wilton Road and terminating at a junction with Work No.4C at a point 18 metres south-east of the junction of Vauxhall Bridge Road and Victoria Street.
	Work No.4B	A passenger subway, passenger lift and stairs between the District & Circle Line westbound platform and Work No.4A, commencing at a point 22 metres north-west of the junction of Terminus Place and Wilton Road and terminating at a junction with Work No.4A at a point 35 metres south of the junction of Vauxhall Bridge Road and Victoria Street.

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of Work</i>	<i>(3)</i> <i>Description of Work</i>
	Work No.4C	A passenger subway commencing at a point 30 metres south-east of the junction of Vauxhall Bridge Road and Victoria Street and terminating at a point 44 metres north of the junction of Allington Street with Victoria Street.
	Work No.4D	A passenger subway from the existing interchange concourse commencing at a point 15 metres west of the junction of Vauxhall Bridge Road with Victoria Street and terminating at a junction with Work No.4C at a point 6 metres north-east of the junction of Vauxhall Bridge Road with Victoria Street.
	Work No.4E	A passenger subway from the existing District & Circle Line eastbound interchange subway commencing at a point 12 metres west of the junction of Allington Street with Victoria Street and terminating at a junction with Work No.4C at a point 38 metres north of the junction of Allington Street with Victoria Street.
	Work No.4F	A passenger subway, passenger lift and stairs from the District & Circle Line eastbound platform, commencing at a point 34 metres west of the junction of Allington Street with Victoria Street and terminating at a junction with the existing interchange concourse at a point 16 metres south-west of the junction of Allington Street with Victoria Street.
	Work No.4G	A passenger subway commencing at a junction with Work No.4C at a point 44 metres north of the junction of Allington Street with Victoria Street to a point 65 metres north of the junction of Allington Street with Victoria Street and then terminating at a point 45 metres west of the junction of Allington Street with Bressenden Place.
	Work No.4H	A passenger subway commencing at a junction with Work No.4G at a point 45 metres west of the junction of Allington Street with Bressenden Place and terminating at a junction with a sub-surface ticket hall (Work No.5) at a point 12 metres south-west of the junction of Allington Street with Bressenden Place.
	Work No.4I	A fire-fighting access subway from Work No.4K commencing at a point 24 metres west of the junction of Allington Street with Bressenden Place and terminating at a junction with a sub-surface ticket hall (Work No.5) at a point 8

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of Work</i>	<i>(3)</i> <i>Description of Work</i>
	Work No.4J	metres west of the junction of Allington Street with Bressenden Place.
	Work No.4K	A passenger subway, escalator shaft and cross-passages commencing at a point 24 metres west of the junction of Allington Street with Bressenden Place and connecting with the existing Victoria Line platform concourse at a point 56 metres north-east of the junction of Allington Street with Victoria Street.
	Work No.5	A fire-fighting access shaft from intermediate level to Victoria Line platform level commencing at a point 28 metres west of the junction of Allington Street with Bressenden Place.
	Work No.6	A sub-surface ticket hall and pump-room (comprising an area of 1,930 square metres) commencing at a point 4 metres north-west of the junction of Bressenden Place and Allington Street terminating at a point 17 metres north-west of the junction of Bressenden Place and Victoria Street, including stairs and passenger lifts to street level.
	Work No.6	A sub-surface operational equipment room commencing at a junction with Work No.4K at a point 28 metres west of the junction of Allington Street and Bressenden Place and terminating at a point 38 metres north-west of the junction of Allington Street and Bressenden Place.

SCHEDULE 2

Article 7

STREETS SUBJECT TO STREET WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Streets subject to street works</i>
City of Westminster	Allington Street Bressenden Place Warwick Row Victoria Street Terminus Place Wilton Road Vauxhall Bridge Road

SCHEDULE 3

Article 8

STREET TO BE STOPPED UP

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>
City of Westminster	Bressenden Place	Part of the eastern footway for purposes of new entrance/exit to northern ticket hall and shown shaded on the traffic regulation plan and marked G.

SCHEDULE 4

Article 9

STREETS TO BE TEMPORARILY STOPPED UP

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street affected</i>	<i>(3)</i> <i>Extent of stopping up</i>
City of Westminster	Allington Street	Between points C and D on the traffic regulation plan and Bressenden Place.
	Bressenden Place	Between points A and B on the traffic regulation plan and Victoria Street, and the area hatched on the traffic regulation plan and marked G.
	Wilton Road	The area hatched on the traffic regulation plan and marked E.
		The area hatched on the traffic regulation plan and marked F.
	Access road off Wilton Road to Terminus Place bus station	Between points J and K on the traffic regulation plan and Wilton Road.
Vauxhall Bridge Road	The area hatched on the traffic regulation plan and marked H.	

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 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

(a) 1973 c. 26.

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 the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

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

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

- (a) a question of disputed compensation in respect of the purchase of the right would apart from this section fall to be determined by the Upper Tribunal (“the tribunal”); and
- (b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that interest 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 London Underground (Victoria Station Upgrade) Order 2009^(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) of this section shall be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 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

(a) S.I. 2009 [2364]

purpose of exercising that right (which shall be deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act shall be modified correspondingly.

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

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

SCHEDULE 6

Articles 2 and 24

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Scheduled work</i>
City of Westminster	5 and 7	Work site	Work No.1
	46	Strengthening of building and for ground treatment works	Work No.4C
	75	Work site	Work No.5

SCHEDULE 7

Article 22

LAND OF WHICH ONLY SUBSOIL MORE THAN 4.5 METRES
BENEATH SURFACE MAY BE ACQUIRED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on land plans</i>
City of Westminster	11, 15, 30, 32, 37, 40, 43, 46 & 48

PROVISIONS RELATING TO STATUTORY UNDERTAKERS, ETC.

Apparatus of statutory undertakers, etc., on land acquired

1.—(1) Subject to the following provisions of this paragraph, 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 Company 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 Company compensation in respect of expenditure reasonably incurred by that person, 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 sub-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 Company compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewage disposal plant.

(5) The provisions of the 1990 Act mentioned in sub-paragraph (1), as applied by that sub-paragraph, shall not have effect in relation to apparatus as respects which paragraph 2 or Part 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) any statutory utility whose apparatus is under, in, upon, over, along or across the street shall have the same powers and rights in respect of that apparatus, subject to the provisions of this paragraph, as if this Order had not been made.

(a) 2003 c. 21.
(b) 1980 c. 66.

(2) Where a street is stopped up under article 8 any statutory utility whose apparatus is under, in, upon, over, along or across the street may, where reasonably necessary for the efficient operation of the undertaking of the statutory utility and, if reasonably requested so to do by the Company, 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 that other position.

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

- (a) the execution of relocation works reasonably required in consequence of the stopping up of the street; and
- (b) the doing of any other work or thing rendered reasonably necessary by the execution of relocation works.

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

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; 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 Company, or, in default of agreement, is not determined by arbitration to be necessary in consequence of the construction of the relocation works in order to ensure the continued efficient operation of the undertaking of the statutory utility, 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 sub-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 except in a case where the apparatus as so extended provides more than an equivalent service; 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 statutory 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 as calculated in accordance with the Code of Practice entitled “Measures Necessary where Apparatus is Affected by Major Works (Diversionary Works)” and dated June 1992 and approved by the Secretary of State on 30th June 1992, as revised and reissued from time to time.

(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 costs 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 Company 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 works executed, or apparatus provided, under sub-paragraph (2);
and

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

FOR PROTECTION OF NETWORK RAIL

1. The following provisions of this Schedule shall have effect, unless otherwise agreed in writing between the Company and Network Rail and in the case of paragraph 13, any other person on whom rights or obligations are conferred by that paragraph.

2. In 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;

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

“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(b)) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“plans” includes sections, designs, 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 Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held by or used for the benefit of 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 adversely 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 shall not be unreasonably withheld or delayed but may be subject to reasonable conditions and is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(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 Company 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

(a) 1993 c. 43.
(b) 1985 c. 6.

- (b) use its 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 Company shall not exercise the powers conferred by article 16 (power to survey and investigate land, etc.) or the powers conferred by section 11(3) of the 1965 Act or the Compulsory Purchase (Vesting Declarations) Act 1981(a) as applied by this Order in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The Company 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 Company shall not exercise the powers conferred by section 271 or 272 of the 1990 Act, as applied by Schedule 8 (provisions relating to statutory undertakers, etc.), 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.

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

5.—(1) The Company 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 56 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated disapproval of those plans and the grounds of disapproval the engineer shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 56 days beginning with the date on which such plans have been supplied to Network Rail, Network Rail gives notice to the Company 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 then, if the Company 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 Company in accordance with the plans approved or deemed to be approved or settled under this paragraph.

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes shall be constructed by Network Rail but at the expense of the Company, or if Network Rail so desires such protective works shall be carried out by the Company at its own expense with all reasonable dispatch and the Company shall not commence the construction of the specified works until the engineer has notified the Company that the protective works have been completed to the engineer's 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;
- (c) in such manner as to cause as little damage as is possible to railway property; and

(a) 1981 c. 66.

(d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic on it and the use by passengers of railway property.

(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 Company shall, regardless of any approval described in paragraph 6(1)(a), 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) Nothing in this Schedule shall impose—

- (a) any liability on the Company with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents; or
- (b) any liability on Network Rail with respect to any damage, costs, expenses or loss attributable to the negligence of the Company or its servants, contractors or agents.

7. The Company 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 the engineer 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 Company and its agents for access to any works carried out by Network Rail under this Schedule during their construction and shall supply the Company with such information as it may reasonably require with regard to such works or the method of constructing them.

9.—(1) If any permanent or temporary alterations or additions to railway property, or to any protective works under paragraph 5(4), are reasonably necessary during the construction of a specified work, or during a period of 12 months after the opening for public use of any authorised work that includes a specified work, in consequence of that specified work, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the Company reasonable notice of its intention to carry out such alterations or additions, the Company shall pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by 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 Company, Network Rail gives notice to the Company that Network Rail desires 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 railways of Network Rail then, if the Company desires that part of the specified work to be constructed, Network Rail shall assume construction of that part of the specified work and the Company shall, regardless of any such approval of a 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 reason of the execution by Network Rail of that specified work.

(3) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving shall be set off against any sum payable by the Company to Network Rail under this paragraph.

10. The Company 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 Company 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 Company and the supervision by the engineer of the construction of a specified work;

- (c) in respect of the employment or procurement of the services of any inspectors and other persons whom it shall be reasonably necessary to appoint for inspecting 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; and
- (d) 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 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 Company informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the Company 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. 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 Company, be repaid by the Company to Network Rail.

13.—(1) The Company shall pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Schedule (but subject to article 41 (no double recovery)) 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 of such a work; or
- (b) by reason of any act or omission of the Company or of any person in its employ or of its contractors or others whilst engaged upon a specified work,

and the Company 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 Company or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's 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 Company from any liability under the provisions of this sub-paragraph.

(2) Network Rail shall give the Company 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 Company.

(3) The sums payable by the Company under sub-paragraph (1) may 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 Infrastructure Limited shall promptly pay to each train operator the amount of any such sums which Network Rail Infrastructure Limited receives under sub-paragraph (3) 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 the relevant costs would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph —

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of 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 Railways Act 1993.

14. Network Rail shall, on receipt of a request from the Company, from time to time provide the Company free of charge with written estimates of the costs, charges, expenses and other liabilities for which the Company is or will become liable under this Schedule (including the amount of the relevant costs mentioned in paragraph 13) and with such information as may reasonably enable the Company 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).

15. 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 Company under this Schedule or increasing the sums so payable.

16. The Company 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 Company of—

- (a) any railway property shown on the 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 or any lands, works or other property referred to in this paragraph.

17. The Company shall no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 39 (certification of plans, etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

FOR PROTECTION OF SPECIFIED UNDERTAKERS

*Interpretation***1. In this Schedule—**

“apparatus” means—

- (a) in the case of a specified undertaker which is an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989^(a)) belonging to or maintained by that undertaker;
- (b) in the case of a specified undertaker which is a gas undertaker, mains, pipes or other apparatus belonging to or maintained by a gas transporter within the meaning of Part 1 of the Gas Act 1986^(b) for the purposes of the transportation and storage of gas;
- (c) in the case of a specified undertaker which is a water undertaker,
 - (i) mains, pipes or other apparatus belonging to or maintained by the undertaker for the purposes of supply, and
 - (ii) mains, pipes or other apparatus that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991^(c); and
- (d) in the case of a specified undertaker which is a sewerage undertaker,
 - (i) any drain or works vested in the undertaker under the Water Industry Act 1991; and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104,
 and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

and includes any structure for the lodging in it of apparatus or for giving access to such apparatus;

“construction” includes execution, placing, altering, replacing, relaying and removal and, in its application to works which include or comprise any operation, means the carrying out of that operation;

“emergency works” has the same meaning as in section 52 of the 1991 Act;

“in”, in a context referring to apparatus in land, includes under, over, across, along or upon land;

“necessary alternative apparatus” means alternative apparatus adequate to enable a specified undertaker to fulfil its statutory or licensed functions in a manner no less efficient than previously;

“plans” includes sections, specifications and method statements;

“specified undertaker” means—

- (a) EDF Energy Networks (LPN) plc whose registered office is 40 Grosvenor Place, Victoria, London SW1X 7EN;
- (b) National Grid Gas plc whose registered office is 1-3 Strand, London WC2N 5EH; and

(a) 1989 c. 29.

(b) 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.

(c) 1991 c. 56.

(c) Thames Water Utilities Limited whose registered office is Clearwater Court, Vastern Road, Reading, Berkshire RG1 8DB;

or any person succeeding any such company as a licence holder within the meaning of Part 1 of the Electricity Act 1989, a gas transporter within the meaning of Part 1 of the Gas Act 1986, a water undertaker within the meaning of the Water Industry Act 1991 or as a sewerage undertaker within the meaning of Part 1 of that Act, and “the specified undertaker” in relation to any apparatus means the specified undertaker to whom the apparatus belongs or by whom it is maintained; and

“specified work” means any of the authorised works which—

- (a) will or may be situated over or within 15 metres measured in any direction of, or may in any way adversely affect, any apparatus; or
- (b) wherever situated, imposes any load upon any sewer, the removal of which has not been required under paragraph 8.

Application of Schedule 8

2. Paragraphs 1(1) and 2 of Schedule 8 (provisions relating to statutory undertakers, etc.) shall not apply in relation to a specified undertaker and paragraphs 1(3) and 1(4) of that Schedule shall have effect as if they referred to apparatus removed under this Schedule.

Apparatus in stopped up streets

3. Where any street is stopped up under article 8 (stopping up of streets), any specified undertaker whose apparatus is in the street shall have the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the Company shall grant to the specified undertaker legal easements reasonably satisfactory to the specified undertaker in respect of such apparatus and access to it, but nothing in this paragraph shall affect any right of the Company or of the specified undertaker to require the removal of that apparatus under paragraph 8 or the power of the Company to carry out works under paragraphs 20 to 29.

4. The Company shall give not less than 28 days’ notice in writing of its intention to stop up any street under article 8 (stopping up of streets) to any specified undertaker whose apparatus is in that street.

On-street apparatus

5. This Schedule shall not apply to anything done or proposed to be done in relation to or affecting any apparatus in so far as the relations between the Company and the specified undertaker are regulated by the provisions of Part 3 of the 1991 Act.

Acquisition of land

6. The Company shall not acquire any apparatus from a specified undertaker pursuant to this Order otherwise than by agreement, which shall not be unreasonably withheld.

7. The Company may in exercise of the powers conferred by this Order acquire or appropriate any land in which any apparatus is placed and, following the removal of such apparatus in accordance with the provisions of this Schedule, any rights in that land relating to that apparatus shall be extinguished but no apparatus shall be removed nor shall any right of the specified undertaker to use, maintain or renew any apparatus be extinguished until any necessary alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the specified undertaker.

Removal of apparatus

8. Paragraphs 9 to 12 apply where—

- (a) the Company requires the removal of any apparatus for the purpose of constructing any of the authorised works and gives to the specified undertaker not less than 56 days' written notice of that requirement together with a plan of the proposed work and of the proposed position of the alternative apparatus to be provided or constructed; or
- (b) in consequence of the exercise or proposed exercise of any of the powers conferred by this Order, the specified undertaker reasonably requires to remove any apparatus.

9. The Company shall, if it is practicable to do so, afford to the specified undertaker the necessary rights and facilities—

- (a) for the construction of any necessary alternative apparatus in other land which is available for the purpose and which is held or used, or intended for use, by the Company for the purpose of its undertaking under this Order or in which it has sufficient rights or interests, and;
- (b) afterwards for the use, maintenance and renewal of such apparatus,

and, if the Company is unable to obtain those rights and facilities, the specified undertaker shall, on receipt of a written notice to that effect from the Company, use its best endeavours to obtain the necessary rights and facilities.

10. The obligation imposed upon the specified undertaker by paragraph 9 shall not extend to the exercise by the specified undertaker of any power to acquire any land or rights in land by compulsory purchase order.

11. Any alternative apparatus to be constructed by the specified undertaker pursuant to paragraph 9 shall be constructed in such manner, and in such line or situation, as may be agreed between the specified undertaker and the Company or, in default of agreement, determined by arbitration.

12. The specified undertaker shall, after the manner of construction and the line or situation of any necessary alternative apparatus have been agreed or determined and after the grant to or obtaining by the specified undertaker of any such facilities and rights as are referred to in paragraph 9, proceed with all reasonable despatch to construct and bring into operation the alternative apparatus and thereafter to remove any apparatus required by the Company to be removed in accordance with paragraph 8.

Removal of apparatus and construction of alternative apparatus by the Company

13. Paragraphs 14 to 16 apply to so much of the work necessary in connection with the construction of alternative apparatus, or the removal of apparatus required to be removed, as will take place in any land held or used, or intended for use, by the Company for the purpose of its undertaking.

14. If the Company gives notice in writing to the specified undertaker that it desires to carry out any part of any work to which this paragraph applies, such work, instead of being carried out by the specified undertaker, may be carried out by the Company with the prior written consent of the specified undertaker (which shall not be unreasonably withheld and shall be subject to any such conditions as are reasonable and proper to protect the apparatus) in accordance with plans and in a position agreed between the specified undertaker and the Company or, in default of agreement, determined by arbitration, with all reasonable despatch under the superintendence (if given) and to the reasonable satisfaction of the specified undertaker.

15. In carrying out any work under paragraph 14 the Company shall comply with all statutory obligations which would have been applicable had the works been carried out by the specified undertaker.

16. Nothing in paragraph 14 shall authorise the Company to carry out the actual placing, erection, installation, bedding, packing, removal, connection or disconnection of any apparatus or, where the apparatus is laid in a trench, execute any filling around the apparatus within 600 millimetres (measured in any direction) of the apparatus.

Facilities and rights for alternative apparatus

17. Where, in accordance with the provisions of this Schedule, the Company affords to the specified undertaker facilities and rights for the construction, use, maintenance and renewal in land of the Company 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 Company and the specified undertaker or, in default of agreement, determined by arbitration.

18. In determining the terms and conditions mentioned in paragraph 17 in respect of alternative apparatus to be constructed across or along the authorised works the arbitrator shall—

- (a) give effect to all reasonable requirements of the Company for ensuring the safety of the authorised works and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any such works; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the case, give effect to any terms and conditions applicable to the apparatus (if any) constructed across or along the authorised works for which the alternative apparatus is to be substituted and to any other reasonable requirements of the specified undertaker.

19. If the facilities and rights to be afforded by the Company in respect of any alternative apparatus under paragraph 17 and the terms and conditions subject to which the same are to be granted are, in the opinion of the arbitrator, more or less favourable on the whole to the specified undertaker than the facilities, rights, terms and conditions applying to the apparatus to be removed, the arbitrator shall make such provision for the payment of compensation to or by the Company by or to the specified undertaker in that respect as shall appear to the arbitrator to be reasonable having regard to all the circumstances of the case.

Retained apparatus: protection and plan approval

20. Not less than 56 days before commencing to construct or renew any specified work, the Company shall submit to the specified undertaker plans of the works.

21. In relation to a work which is a specified work because of its proximity to or effect on a sewer, the plans to be submitted to the specified undertaker under paragraph 20 shall be detailed plans describing—

- (a) the exact position of the specified work;
- (b) the level at which it is proposed to be constructed or renewed;
- (c) the manner of its construction or renewal;
- (d) the position of all sewers within 15 metres of the specified work or upon which the specified work will impose a load; and
- (e) by way of detailed drawings, every alteration proposed to be made to any such sewer.

22. The Company shall not commence the construction or renewal of any specified work to which paragraph 21 applies until the specified undertaker has given written approval of the plans so submitted.

23. Any approval of the specified undertaker required under paragraph 22—

- (a) may be given subject to reasonable conditions for any purpose mentioned in paragraph 24;
- (b) shall not be unreasonably withheld; and

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

24. In relation to a work to which paragraph 21 applies, the specified undertaker may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its sewerage system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any sewer.

25. A specified work shall be constructed (and in the case of any temporary work removed) only in accordance with—

- (a) the approved plans (and, in the case of plans relating to sewers approved, deemed to have been approved or settled by arbitration, as amended from time to time by agreement between the Company and the specified undertaker); and
- (b) all reasonable requirements made by the specified undertaker for the alteration, or otherwise for the protection, of the apparatus, or for securing access to it,

and the specified undertaker shall be entitled by its officer to watch and inspect the carrying out of the work.

26. If within 42 days after the submission to it of any plans under paragraph 20, in consequence of the works proposed by the Company the specified undertaker reasonably requires the removal of any apparatus and gives written notice to the Company of that requirement, the foregoing provisions of this Schedule shall have effect as if the removal of such apparatus had been required by the specified undertaker under paragraph 8.

27. Nothing in paragraph 20 or 26 shall preclude the Company from submitting at any time, or from time to time, but in no case less than 28 days before commencing the construction of any specified work, a new plan in place of the plan previously submitted, in which case the provisions of those paragraphs shall apply to, and in respect of, such new plan except that the reference in paragraph 26 to 42 days shall be treated as a reference to 21 days.

28. The Company shall not be required to comply with paragraph 20 in a case where it is necessary to carry out emergency works but, in such a case, it shall give to the specified undertaker notice so soon as reasonably practicable, and a plan of the works so soon as reasonably practicable afterwards, and shall comply with paragraph 25 so far as reasonably practicable in the circumstances.

29. Nothing in paragraph 28 shall entitle the Company to carry out works to any apparatus but, upon receipt of notice from the Company, the specified undertaker shall proceed to carry out such works as may be required with all reasonable despatch.

Co-operation

30. Where in consequence of the proposed construction of any of the authorised works, the Company or a specified undertaker requires the removal of apparatus under paragraph 8 or a specified undertaker makes requirements for the protection or alteration of apparatus under paragraph 25, the Company shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and each specified undertaker shall use its best endeavours to co-operate with the Company for that purpose.

Access

31. If in consequence of the exercise of the powers conferred by this Order the access to any apparatus is materially obstructed the Company shall provide such alternative means of access to such apparatus as will enable the specified undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

Expenses

32. Subject to the provisions of the following paragraphs of this Schedule, the Company shall repay to the specified undertaker the reasonable expenses incurred by the specified undertaker 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 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);
- (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 Company of any power under this Order;
- (c) the survey of any land, apparatus or works, the inspection, superintendence and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the exercise by the Company of any power under this Order; and
- (d) any other work or thing rendered reasonably necessary in consequence of the exercise by the Company of any such power,

within a reasonable time of being notified by the specified undertaker that it has incurred such expenses.

33. There shall be deducted from any sum payable under paragraph 32 the value of any apparatus removed under the provisions of this Schedule, that value being calculated after removal.

34. If in pursuance of the provisions of this Schedule—

- (a) alternative apparatus of better type, or greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions, except where this has been solely due to using the nearest currently available type; or
- (b) apparatus (whether existing apparatus or alternative apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

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 Company or, in default of agreement, is not determined by arbitration to be necessary having regard, among other things, to the nature of the authorised works, then, if such placing involves cost in the construction of works under paragraphs 9 to 12 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 specified undertaker by virtue of paragraph 32 shall be reduced by the amount of that excess.

35. For the purposes of paragraph 34—

- (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 except in a case where the apparatus as so extended serves a purpose (either additional to or instead of that served by the existing apparatus) which was not served by the existing apparatus; and
- (b) where the provision of a joint in a pipe or 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.

36. An amount which apart from this paragraph would be payable to the specified undertaker in respect of works by virtue of paragraphs 32 to 35 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 specified undertaker any financial benefit by deferment of the time for renewal of the apparatus or of the system of which it forms part in the ordinary course, be reduced by the

amount which represents that benefit as calculated in accordance with the Code of Practice entitled “Measures Necessary where Apparatus is Affected by Major Works (Diversionary Works)” and dated June 1992 and approved by the Secretary of State on 30th June 1992, as revised and re-issued from time to time.

37. In any case where work is carried out by the Company pursuant to paragraphs 14 to 16 and, if such work had been carried out by the specified undertaker, the repayment made to the specified undertaker under paragraph 32 would fall to be reduced pursuant to paragraphs 34 to 36, the specified undertaker shall pay to the Company such sum as represents the amount of that reduction.

Indemnity

38. If, by reason or in consequence of the construction, maintenance or failure of any of the authorised works, including any works carried out by the Company pursuant to paragraph 14 or protective works required by a condition imposed under paragraph 23(a) or required under paragraph 25(b), or any subsidence resulting from any of those works, 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 other property of the specified undertaker, or there is any interruption in any service provided by the specified undertaker, the Company shall repay the cost reasonably incurred by the specified undertaker in making good such damage, or restoring the supply, and shall—

- (a) make reasonable compensation to the specified undertaker for any loss sustained by it; and
- (b) indemnify the specified undertaker against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from, or incurred by, the specified undertaker,

by reason or in consequence of any such damage or interruption; and the fact that any act or thing may have been done by the specified undertaker on behalf of the Company or in accordance with plans approved by the specified undertaker or in accordance with any requirement of the specified undertaker or under its supervision shall not, subject to paragraph 39, excuse the Company from any liability under the provisions of this paragraph.

39. Nothing in paragraph 38 shall impose any liability on the Company with respect to any damage or interruption to the extent that such damage or interruption is attributable to the neglect or default of the specified undertaker, its officers, servants, contractors or other agents.

40. The specified undertaker shall give to the Company reasonable notice of any claim or demand under the provisions of paragraph 38 and no settlement or compromise of it shall be made without the prior consent of the Company which shall not be unreasonably withheld.

Exercise of safeguarding and survey powers

41. The Company shall, so far as is reasonably practicable, so exercise the powers conferred by article 14 (protective works to buildings) so as not to obstruct or render less convenient the access to any apparatus.

42. The Company shall not, in the exercise of the powers conferred by section 11(3) of the 1965 Act, as applied by this Order, or by article 16 (power to survey and investigate land, etc.), make any trial holes which interfere with any apparatus without the consent of the specified undertaker (which shall not be unreasonably withheld).

Arbitration

43. Any difference arising between the Company and a specified undertaker under this Schedule (other than a difference as to its meaning or construction) shall be determined by arbitration in the manner provided by article 42 (arbitration) and in determining any difference under this Schedule the arbitrator may, if the arbitrator thinks fit, require the Company to execute any temporary or

other works so as to avoid, so far as may be reasonably practicable, interference with the use of any apparatus.

Notices

44. Any notice in writing to be given by the Company to a specified undertaker under this Schedule shall be deemed effectively given if sent by recorded delivery or by registered letter addressed to the registered office of that specified undertaker.

SCHEDULE 11

Article 34

TRAFFIC REGULATION

No stopping, parking, waiting, loading or unloading at any time

<i>(1)</i> <i>Road</i>	<i>(2)</i> <i>Extent</i>	<i>(3)</i> <i>Notes</i>
Bressenden Place	South-west side, between A-B and Victoria Street	To maintain traffic flow, including management of diverted traffic, during construction of the authorised works.
Allington Street	South side, between PC1-PC2 and PD1-PD2 and west side, between PE1-PE2 and PF1-PF2	To maintain traffic flow, including management of diverted traffic and to provide a temporary taxi queuing facility during construction of the authorised works.
Victoria Street	Both sides, between PG1-PG2 and PH1-PH2	To maintain traffic flow, including management of diverted traffic, during construction of the authorised works.
Hudson's Place	Both sides, between PL1-PL2 and PK1-PK2	To accommodate temporary taxi ranks and access for servicing National Rail station.
Vauxhall Bridge Road	Both sides, between PM1-PM2 and PJ1-PJ2	To maintain traffic flow including the accommodation of two-way operation and management of diverted traffic, during construction of the authorised works.
Warwick Row	West side, between PN1-PN2 and PO1-PO2	To maintain traffic flow, including management of diverted traffic, during construction of the authorised works.
Wilton Road	East side, between PN1-PN2 and PO1-PO2	To maintain traffic flow, including management of diverted traffic, during construction of the authorised works.
Terminus Place	North side, from its junction with Wilton Road for a distance of 8 metres in a westerly direction	To maintain traffic flow, including management of diverted traffic, during construction of the authorised works.
Eccleston Place	East side, between PP1-PP2 and PP3-PP4	To accommodate diverted bus services and for the provision of bus stands.

Gillingham Street	North side, between PR1-PR2 and PR3-PR4	To maintain traffic flow, including management of diverted traffic, during construction of the authorised works and to accommodate a temporary queuing facility.
Wilton Road	West side, between PS1-PS2 and PS3-PS4	To maintain traffic flow, including management of diverted traffic, during construction of the authorised works and to accommodate a temporary taxi queuing facility.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises London Underground Limited to carry out works to upgrade Victoria underground station, comprising a new sub-surface ticket hall beneath Bressenden Place, the expansion of the existing Victoria Line ticket hall beneath Wilton Road, new lifts, sub-surface escalators and pedestrian links, and for that purpose, to acquire, compulsorily or by agreement, land and rights in land and to use land.

A copy of the works and land plans, the book of reference and the traffic regulation plan mentioned in this Order and certified in accordance with article 39 (certification of plans, etc.) of this Order, may be inspected free of charge during working hours at the offices of London Underground Limited at 55 Broadway, London SW1H 0BD.

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