
STATUTORY INSTRUMENTS

2010 No. 1721

TRANSPORT AND WORKS, ENGLAND
TRANSPORT, ENGLAND

The Network Rail (Nuneaton North Chord) Order 2010

Made - - - - 29th June 2010

Coming into force - - 20th July 2010

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⁽¹⁾ for an Order under sections 1 and 5 of the Transport and Works Act 1992⁽²⁾ (“the 1992 Act”).

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

The Secretary of State, having considered the objections made and not withdrawn and the report of the person who held the inquiry, has determined to make an Order giving effect to the proposals comprised in the application with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

Notice of the Secretary of State’s determination was published in the London Gazette on 23rd June 2010.

The Secretary of State, in exercise of the powers conferred by sections 1 and 5 of, and paragraphs 1 to 5, 7, 8, 10, 11 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 Network Rail (Nuneaton North Chord) Order 2010 and shall come into force on 20th July 2010.

⁽¹⁾ S.I. 2006/1466.

⁽²⁾ 1992 c. 42. Part 1 of this Act is amended by S.I. 1995/1541, S.I. 1998/2226, S.I. 2000/3199 and S.I. 2006/958.

Interpretation

2.—(1) In this Order—

- “the 1961 Act” means the Land Compensation Act 1961⁽³⁾;
- “the 1965 Act” means the Compulsory Purchase Act 1965⁽⁴⁾;
- “the 1990 Act” means the Town and Country Planning Act 1990⁽⁵⁾;
- “the 1991 Act” means the New Roads and Street Works Act 1991⁽⁶⁾;
- “the 2003 Act” means the Communications Act 2003⁽⁷⁾;
- “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;
- “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 meanings as in the Highways Act 1980⁽⁸⁾;
- “electronic communications network” has the same meaning as in the 2003 Act⁽⁹⁾;
- “electronic transmission” means a communication transmitted—
 - (a) by means of an electronic communications network; or
 - (b) by other means but while in electronic form;
- “footway” has the same meaning as in the Highways Act 1980;
- “highway” and “highway authority” have the same meaning as in the Highways Act 1980;
- “the limits of deviation” means the limits of deviation for the scheduled works shown on the Order plans;
- “the limits of land to be acquired or used” means the limits of land to be acquired or used shown on the Order plans;
- “maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace, and “maintenance” shall be construed accordingly;
- “Network Rail” means Network Rail Infrastructure Limited (Company No. 02904587) whose registered office is at Kings Place, 90 York Way, London N1 9AG;
- “the Order limits” means the limits of deviation and the limits of land to be acquired or used which are shown on the Order plans;
- “the Order plans” means the plans certified by the Secretary of State as the Order plans for the purposes of this Order;
- “the Order sections” means the sections certified by the Secretary of State as the Order sections for the purposes of this Order;
- “owner”, in relation to land, has the same meaning as in the Acquisition of Land Act 1981⁽¹⁰⁾;
- “the scheduled works” means the works specified in Schedule 1 (scheduled works) or any part of them;

⁽³⁾ 1961 c. 33.

⁽⁴⁾ 1965 c. 56.

⁽⁵⁾ 1990 c. 8.

⁽⁶⁾ 1991 c. 22.

⁽⁷⁾ 2003 c. 21.

⁽⁸⁾ 1980 c. 66.

⁽⁹⁾ See section 32.

⁽¹⁰⁾ 1981 c. 67.

“statutory undertaker” means—

- (c) any person who is a statutory undertaker for any of the purposes of the 1990 Act; and
- (d) any public communications provider within the meaning of section 151(1) of the 2003 Act;

“street” includes part of a street;

“street authority” in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“the tribunal” means the Upper Tribunal; and

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

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in or on land or in the air-space 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) References in this Order to numbered plots are references to plot numbers on the Order plans.

(5) References in this Order to points identified by letters, or letters and numbers, are to be construed as references to points on the Order plans.

(6) All distances, directions and lengths stated in the description of the scheduled works or in any description of powers or lands are approximate and distances between points on a scheduled work shall be taken to be measured along the scheduled work.

Incorporation of Railways Clauses Acts

3.—(1) The following provisions of the Railways Clauses Consolidation Act 1845(**11**) shall be incorporated in this Order—

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

section 68 (accommodation works by company);

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

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

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

sections 78 to 85E and Schedules 1 to 3 (minerals under railways), as respectively substituted and inserted by section 15 of the Mines (Working Facilities and Support) Act 1923(**12**);

section 103 (refusal to quit carriage at destination);

section 105 (carriage of dangerous goods on railway); and

section 145 (recovery of penalties).

(2) Section 12 (signals, watchmen etc.) of the Railways Clauses Act 1863(**13**) shall be incorporated in this Order.

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

“the company” means Network Rail;

“goods” includes any thing conveyed on the railway authorised to be constructed by this Order;

(11) 1845 c. 20.

(12) 1923 c. 20.

(13) 1863 c. 92.

“lease” includes an agreement for a lease;

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

“the railway” means any railway authorised to be constructed by this Order and any other authorised work;

“the special Act” means this Order; and

“toll” includes any rate or charge or other payment payable under this Order or any other enactment for any passenger or goods conveyed on any railway authorised to be constructed by this Order.

Application of the 1991 Act

4.—(1) The provisions of the 1991 Act mentioned in paragraph (2) (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 the temporary stopping up, temporary alteration or temporary diversion of a street by Network Rail under the powers conferred by article 9 (temporary stopping up of streets) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(2) The provisions of the 1991 Act referred to in paragraph (1) are—

subject to paragraph (3), section 54 (advance notice of certain works);

subject to paragraph (3), section 55 (notice of starting date of works);

section 57 (notice of emergency works);

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

section 60 (general duty of undertakers to co-operate);

section 68 (facilities to be afforded to street authority);

section 69 (works likely to affect other apparatus in the street);

section 76 (liability for cost of temporary traffic regulation);

section 77 (liability for cost of use of alternative route); and

all other such provisions as apply for the purposes of the provisions mentioned above.

(3) Sections 54 and 55 of the 1991 Act as applied by paragraph (1) 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.

PART 2

WORKS PROVISIONS

Principal powers

Power to construct and maintain works

5.—(1) Network Rail may construct and maintain the scheduled works.

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

(3) Subject to paragraph (5), Network Rail 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) railway electrification and signalling works;
- (b) the provision of buildings, yards, machinery, plant, apparatus and other works and conveniences;
- (c) the provision, repair and strengthening of approaches, bridges, subways, turning places, ramps, passages, means of access, shafts and stagings as Network Rail thinks fit;
- (d) the provision of embankments, aprons, abutments, retaining walls, wing walls and culverts;
- (e) works to alter or remove any structure erected on any highway or adjoining land;
- (f) works to alter the position of apparatus, including mains, sewers, drains and cables;
- (g) works to alter the course of, or otherwise interfere with, a watercourse other than a navigable watercourse;
- (h) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised works (other than works authorised by this sub-paragraph); and
- (i) works for the benefit or protection of premises affected by the authorised works (other than works authorised by this paragraph).

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

(5) Paragraphs (3) and (4) shall only authorise the carrying out or maintenance of works outside the limits of deviation if such works are carried out on land specified in columns (1) and (2) of Part 2 of Schedule 4 (acquisition of land) or in columns (1) and (2) of Schedule 7 (land of which temporary possession may be taken) in each case for the purpose specified in relation to that land in column (3) of the appropriate Schedule.

Power to deviate

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

Streets

Power to execute street works

7.—(1) Network Rail may, for the purposes of the authorised works, enter upon so much of any street 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 work referred to in sub-paragraph (a), (b) or (c).
- (2) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

Stopping up of street and extinguishment and creation of rights

8.—(1) Subject to the provisions of this article, Network Rail may, in connection with the construction of the authorised works, stop up the street specified in columns (1) and (3) of Schedule 2 (street to be stopped up) to the extent specified, by reference to the letters and numbers shown on the Order plans, in column (4) of that Schedule.

- (2) Network Rail shall not exercise the powers conferred by paragraph (1) until either—
 - (a) Work No. 4 has been completed to the reasonable satisfaction of the street authority and is open for use; or
 - (b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and subsequently maintained by Network Rail, to the reasonable satisfaction of the street authority, between the commencement and termination points until the completion and opening of Work No. 4 in accordance with sub-paragraph (a).
- (3) When Stoney Road has been stopped up under this article—
 - (a) all rights of way over or along so much of Stoney Road as has been so stopped up shall be extinguished; and
 - (b) Work No. 4 shall be subject to rights of way equivalent to such rights of way as are extinguished by sub-paragraph (a).
- (4) Any person who suffers loss by the extinguishment or creation 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 is subject to paragraph 2 of Schedule 8 (statutory undertakers, etc.).

Temporary stopping up of streets

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

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.
- (2) Without limiting the scope of paragraph (1), Network Rail may use any street stopped up under the powers conferred by this article as a temporary working site.
- (3) Network Rail 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 limiting the scope of paragraph (1), Network Rail may exercise the powers conferred by this article in relation to the streets specified in columns (1) and (3) of Schedule 3 (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the Order plans, in column (4) of that Schedule.
- (5) Network Rail shall not exercise the powers conferred by this article—
 - (a) in relation to any street specified as mentioned in paragraph (4) without first consulting the street authority; and

- (b) in relation to any other street without the consent of the street authority which may attach reasonable conditions to any consent, but such consent shall not be unreasonably withheld.
- (6) Any person who suffers loss by the suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.
- (7) If a street authority fails to notify Network Rail of its decision within 28 days of receiving an application for consent under paragraph (5)(b), that street authority shall be deemed to have granted consent.

Access to works

10.—(1) Network Rail may, for the purposes of the authorised works, and 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 Network Rail reasonably requires for the purposes of the authorised works.

(2) If a highway authority fails to notify Network Rail of its decision within 28 days of receiving an application for approval under paragraph (1), that highway authority shall be deemed to have granted approval.

Agreements with street authorities

11.—(1) Network Rail and a street authority may enter into agreements with respect to—

- (a) the construction of Work No. 4 under the powers conferred by this Order;
 - (b) the maintenance of the structure of any bridge or tunnel carrying a street over or under a railway;
 - (c) any stopping up, alteration or diversion of a street conferred by article 9 (temporary stopping up of streets); or
 - (d) 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 limitation on the scope of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question; and
 - (b) contain such terms as to payment and otherwise as the parties consider appropriate.

Specific works

Canal Farm Road and Work No. 3: rights

12.—(1) When Work No. 3 has been completed and is open for use—

- (a) all rights of way over or along so much of Canal Farm Road (as existing at the date this Order comes into force) as is within plots nos. 2A, 3 and 3A shall be extinguished; and
- (b) Work No. 3 shall be subject to rights of way equivalent to the rights of way extinguished by sub-paragraph (a).

(2) Any person who suffers loss by the extinguishment or creation of any 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.

Temporary closure of and works in Coventry Canal

13.—(1) Network Rail may in connection with the construction of Work No. 1 or Work No. 2—

- (a) construct and maintain temporary works within plot no. 15; and
 - (b) on grounds of health and safety only, temporarily interfere with or close to navigation any part of the canal within the Order limits.
- (2) During any period of interference or closure referred to in paragraph (1)(b), all rights of navigation and other rights relating to, and any obligations of the British Waterways Board to manage, the part of the canal so interfered with or closed shall be suspended and unenforceable against the British Waterways Board.
- (3) Any person who suffers loss or damage as the result of the suspension or interruption of any right under this article shall be entitled to compensation paid by Network Rail to be determined, in case of dispute, under Part 1 of the 1961 Act.

Supplemental powers

Discharge of water

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

(2) Any dispute arising from the exercise of the powers conferred by 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⁽¹⁴⁾.

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

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

(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991⁽¹⁵⁾.

(8) If a person fails to notify Network Rail of a decision within 28 days of receiving an application for consent under paragraph (3) or approval under paragraph (4)(a), that person shall be deemed to have granted consent or given approval, as the case may be.

(9) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Environment Agency, an internal drainage board, a local authority or a sewerage undertaker; 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.

⁽¹⁴⁾ 1991 c. 56.

⁽¹⁵⁾ 1991 c. 57.

Power to survey and investigate land

15.—(1) Network Rail may for the purposes of this Order—

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

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

(3) Any person entering land under this article on behalf of Network Rail—

- (a) shall, if so required, before or after entering the land produce written evidence of that person's 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 hole 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) Network Rail shall compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) Nothing in this article shall obviate the need to obtain scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979⁽¹⁶⁾.

(7) If either a highway authority or a street authority fails to notify Network Rail of a decision within 28 days of receiving an application for consent under paragraph (4)(a) or (4)(b), as the case may be, that authority shall be deemed to have granted consent.

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

16. Network Rail may acquire compulsorily so much of the land shown on the Order plans within the Order limits and described in the book of reference—

(16) 1979 c. 46.

- (a) as is specified in Part 1 of Schedule 4 (acquisition of land for construction of the authorised works) and as may be required for the purposes of the authorised works; and
- (b) as is specified in columns (1) and (2) of Part 2 of Schedule 4 (acquisition of land for specified purposes), and as may be required for any purpose specified in relation to that land in column (3) of that Part,

and may use any land so acquired for the purposes of, or for any other purposes that are ancillary to, its railway undertaking as existing from time to time.

Application of Part 1 of the Compulsory Purchase Act 1965

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

- (a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981⁽¹⁷⁾ applies; and
- (b) as if this Order were a compulsory purchase order made under that Act.

(2) Part 1 of the 1965 Act, as applied by paragraph (1), 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 giving of bonds, were omitted.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

18.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981⁽¹⁸⁾ shall apply as if this Order were a compulsory purchase order.

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

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

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

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

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

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

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

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in 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.

⁽¹⁷⁾ 1981 c. 67.

⁽¹⁸⁾ 1981 c. 66.

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

(8) References to the 1965 Act shall be construed as references to that Act as applied to the acquisition of land under article 16 (power to acquire land).

Power to acquire new rights

19.—(1) Network Rail may acquire compulsorily such easements or other rights over any land which it is authorised to acquire under the powers conferred by article 16 (power to acquire land) as may be required for any purpose for which that land may be acquired under that provision, by creating them as well as by acquiring easements or other rights already in existence.

(2) Without prejudice to paragraph (1), Network Rail may acquire compulsorily over any of the land specified in columns (1) and (2) of Schedule 5 (acquisition of rights, etc.) such temporary or permanent easements or other rights as it requires for the purposes mentioned in relation to that land in column (3) of that Schedule.

(3) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights)), where Network Rail acquires a right over land under paragraph (1) Network Rail shall not be required to acquire a greater interest in that land.

(4) Schedule 6 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.

Temporary possession of land

Temporary use of land for construction of works

20.—(1) Network Rail may, in connection with the carrying out of the authorised works—

(a) enter upon and take temporary possession of—

(i) the land specified in columns (1) and (2) of Schedule 7 (land of which temporary possession may be taken) for the purposes specified in column (3) of that Schedule relating to the authorised works specified in column (4) of that Schedule; and

(ii) any other land within the Order limits in respect of which no notice to treat has been served under section 11 of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981;

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

(c) construct temporary works (including the provision of means of access) and buildings on the land; and

(d) construct any permanent works specified in relation to that land in columns (3) and (4) of Schedule 7.

(2) Not less than 14 days before entering upon and taking temporary possession of land under this article Network Rail shall serve notice of the intended entry on the owners and occupiers of the land.

(3) Network Rail may not, without the agreement of the owners of the land, remain in possession of any land under this article—

(a) in the case of land specified in Schedule 7, 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 7; or

- (b) in the case of land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which compulsory possession of this land was taken unless Network Rail has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declaration) Act 1981.
- (4) Subject to paragraph (5), before giving up possession of land of which temporary possession has been taken under this article, Network Rail shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but Network Rail shall not be required to replace a building removed under this article.
- (5) Network Rail shall not be obliged to reinstate—
- (a) plots nos. 3 and 3A (Canal Farm Road and Work No. 3);
 - (b) plot no. 12 (bridge over Coventry Canal); or
 - (c) plots nos. 27, 28, 29, 30, 31 and 32 (Stoney Road).
- (6) Network Rail 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 36 (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) The powers of compulsory acquisition of land conferred by this Order shall not apply in relation to the land referred to in paragraph (1)(a)(i) except that Network Rail shall not be precluded from acquiring new rights over any part of that land under article 19 (power to acquire new rights).
- (10) Where Network Rail takes possession of land under this article, it shall not be required to acquire the land or any interest in it.
- (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 17(1) (application of Part 1 of the Compulsory Purchase Act 1965).

Compensation

Disregard of certain interests and improvements

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

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

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

(2) In paragraph (1) “relevant land” means the land acquired from the person concerned or any other land with which 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

22.—(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 19 (power to acquire new rights), the tribunal shall set off against the value of the rights so acquired—

- (a) any increase in value of the land over which the new rights are required; and
- (b) any increase in the 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

23.—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 17 (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 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 Network Rail 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 Network Rail 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 Network Rail is authorised to acquire compulsorily under this Order.

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

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

the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which Network Rail 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, Network Rail 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, Network Rail 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

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

whichever is the sooner.

- (2) Subject to paragraph (5), all private rights of way over land of which Network Rail takes temporary possession under article 20 (temporary use of land for construction of works) shall be suspended and unenforceable for as long as Network Rail remains in lawful possession of the land.

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

(4) This article does not apply in relation to any right of way to which section 271 or 272 of the 1990 Act (extinguishment of rights of statutory undertakers, etc.) or paragraph 2 of Schedule 8 (statutory undertakers, etc) applies.

(5) Paragraphs (1) and (2) shall have effect subject to—

- (a) any notice given by Network Rail before the completion of the acquisition of the land, Network Rail's appropriation of it, Network Rail's entry onto it or Network Rail's taking temporary possession of it that either or both of those paragraphs shall not apply to any right of way specified in the notice; and
- (b) any agreement made (whether before or after any of the events mentioned in sub-paragraph (a) and before or after the coming into force of this Order) which makes reference to this article between Network Rail and the person in or to whom the right of way in question is vested or belongs.

(6) If any such agreement as is mentioned in sub-paragraph (5)(b) is expressed to have effect also for the benefit of those deriving title from or under the person in or to whom the right of way in question is vested or belongs, it shall be effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

Time limit for exercise of powers of acquisition

25.—(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 17 (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 18 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)(**19**)).

(2) The powers conferred by article 20 (temporary use of land for construction of works) shall cease at the end of the period referred to in paragraph (1), but this paragraph shall not prevent Network Rail remaining in possession of land after the end of that period, if the land was entered and possession of it was taken before the end of that period.

PART 4

MISCELLANEOUS AND GENERAL

Defence to proceedings in respect of statutory nuisance

26.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(**20**) (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 Network Rail for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to authorised works and that the nuisance is attributable to the carrying out of authorised works which are being carried out in accordance with a notice served under section 60 of

(19) 1981 c. 66.

(20) 1990 c. 43.

the Control of Pollution Act 1974⁽²¹⁾ or a consent given under section 61 or 65 of that Act; or

- (b) that the nuisance is a consequence of the operation of the authorised works and that it cannot reasonably be avoided.

(2) The following provisions of the Control of Pollution Act 1974, namely—

- (a) section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990); and
- (b) section 65(8) (corresponding provision in relation to consent for registered noise level to be exceeded),

shall not apply where the consent relates to the use of premises by Network Rail 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 the application to the authorised works of section 122 of the Railways Act 1993⁽²²⁾ (statutory authority as a defence to actions in nuisance, etc.) or any rule of common law having similar effect.

Power to lop trees overhanging the authorised works

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

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

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

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

Planning permission and supplementary matters

28.—(1) In relation to the application of paragraph (3)(c) of the second Schedule to the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Tree Preservation Order) Regulations 1969⁽²³⁾ (including that paragraph applied by regulation 3(ii) of the Town and Country Planning (Tree Preservation Order) (Amendment) and (Trees in Conservation Areas) (Exempted Cases) Regulations 1975⁽²⁴⁾, or as incorporated in any tree preservation order), any direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to the authorised works shall be treated as deeming the permission to have been granted on application made under Part 3 of that Act for the purposes of that Part.

(2) In relation to the application of article 5(1)(d) of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Trees) Regulations 1999⁽²⁵⁾ as incorporated in any tree preservation order or as having effect by virtue of regulation 10(1)(a) of those Regulations, any direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to the authorised works shall not be treated as an outline planning permission.

(21) 1974 c. 40.

(22) 1993 c. 43.

(23) S.I. 1969/17.

(24) S.I. 1975/148.

(25) S.I. 1999/1892.

(3) Planning permission which is deemed by a direction under section 90(2A) of the 1990 Act to be granted in relation to the authorised works 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).

Obstruction of construction of authorised works

29. Any person who, without reasonable excuse—

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

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

Statutory undertakers, etc.

30. The provisions of Schedule 8 (statutory undertakers, etc.) shall have effect.

Protection for specified undertakers

31. The provisions of Schedule 9 (protection for specified undertakers) shall have effect.

Protection for operators of electronic communications code networks

32. The provisions of Schedule 10 (protection for operators of electronic communications code networks) shall have effect.

Protection for the Environment Agency

33. The provisions of Schedule 11 (protection for the Environment Agency) shall have effect.

Certification of plans, etc.

34. Network Rail shall, as soon as practicable after the making of this Order, submit copies of the book of reference, the Order sections and the Order plans to the Secretary of State for certification that they are, respectively, true copies of the book of reference, Order sections and Order plans referred to in this Order; and a document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

35.—(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⁽²⁶⁾ (references to service by post) 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, that person's last known address at the time of service.

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

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

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

(6) Where the recipient of a notice or other documents 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 transmission 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

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

Arbitration

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

(26) 1978 c. 30.

Signed by authority of the Secretary of State

29th June 2010

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

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SCHEDULES

SCHEDULE 1

Articles 2 and 5

SCHEDULED WORKS

In the County of Warwickshire—

In the Boroughs of North Warwickshire and Nuneaton and Bedworth—

Work No. 1 — A railway (1,478 metres in length) commencing by a junction with the West Coast Main Line railway at a point 495 metres north-west of Canal Farm accommodation bridge (WCML overbridge 49A), passing south-eastwards and terminating by a junction with the Arley Lines railway at a point 235 metres north-east of the junction of Jodrell Street with Aston Road. Work No. 1 includes a bridge to carry the railway over Stoney Road.

In the Borough of Nuneaton and Bedworth—

Work No. 2 — An access road, providing access to Work No. 1 and to the West Coast Main Line railway, commencing at a point 342 metres north-west of Canal Farm accommodation bridge (WCML overbridge 49A), passing south-eastwards and terminating at a point 160 metres north of the junction of Jodrell Street with Aston Road. Work No. 2 includes an access road alongside the West Coast Main Line railway and a bridge carrying the access road under Work No. 1.

Work No. 3 — Realignment of Canal Farm road commencing at a point 172 metres south-west of the bridge carrying that road over the West Coast Main Line railway and terminating at a point 160 metres north-east of its commencement. Work No. 3 includes a bridge carrying the realigned road over Work No. 1.

Work No. 4 — Diversion of Stoney Road commencing at a point 225 metres north of the junction of Stoney Road and Midland Road and terminating at a point 75 metres north-east of Stoney Road's commencement. Work No. 4 includes the demolition of the existing bridge carrying Stoney Road over the former Ashby Lines railway.

SCHEDULE 2

Article 8

STREET TO BE STOPPED UP

(1) <i>Area</i>	(2) <i>Sheet of Order plans</i>	(3) <i>Street to be stopped up</i>	(4) <i>Extent of stopping up</i>	(5) <i>Alternative provision (if any)</i>
County of Warwickshire				

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(1) <i>Area</i>	(2) <i>Sheet of Order plans</i>	(3) <i>Street to be stopped up</i>	(4) <i>Extent of stopping up</i>	(5) <i>Alternative provision (if any)</i>
Borough of Nuneaton and Bedworth	3	Stoney Road	Between points P1 and P3 and P2	Work No. 4

SCHEDULE 3

Article 9

STREETS TO BE TEMPORARILY STOPPED UP

(1) <i>Area</i>	(2) <i>Sheet of Order plans</i>	(3) <i>Streets to be stopped up</i>	(4) <i>Extent of stopping up</i>	(5) <i>Alternative provision (if any)</i>
County of Warwickshire				
Borough of Nuneaton and Bedworth	3	Stoney Road	Between points A and B	Between points A, C and B
	3	Towpath Coventry Canal (possible right of way)	Between points T1 and T2	

SCHEDULE 4

Articles 5 and 16

ACQUISITION OF LAND

PART 1

ACQUISITION OF LAND FOR CONSTRUCTION OF THE AUTHORISED WORKS

(1) <i>Area</i>	(2) <i>Sheet of Order plans</i>	(3) <i>Number of land on Order plans</i>
County of Warwickshire		

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Sheet of Order plans</i>	<i>(3)</i> <i>Number of land on Order plans</i>
Borough of Nuneaton and Bedworth	1	2, 2A, 3
	1, 2	1, 6, 7
	2	11, 19
	2, 3	21, 22
	3	24, 25

PART 2

ACQUISITION OF LAND FOR SPECIFIED PURPOSES

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land on Order plans</i>	<i>(3)</i> <i>Purposes for which land may be acquired</i>
County of Warwickshire		
Boroughs of North Warwickshire and Nuneaton and Bedworth	5	Drainage and environmental mitigation
Borough of Nuneaton and Bedworth	22	Worksite and environmental mitigation

SCHEDULE 5

Article 19

ACQUISITION OF RIGHTS, ETC.

(1) <i>Area</i>	(2) <i>Number of land on Order plans</i>	(3) <i>Purposes for which rights may be acquired</i>
County of Warwickshire		
Borough of Nuneaton and Bedworth	8, 10	Access for construction and afterwards for maintenance
	13, 14, 15, 17	Access for construction
	19, 20, 26, 27, 28, 29, 30, 31, 32	Access for construction and afterwards for maintenance
	33, 35, 36	Access for construction

SCHEDULE 6

Article 19

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 limitation on the scope of paragraph 1, the Land Compensation Act 1973⁽²⁷⁾ 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”.

(27) 1973 c. 26.

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

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

Application of the 1965 Act

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

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

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

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

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

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

“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 Network Rail (Nuneaton North Chord) Order 2010⁽²⁸⁾ (“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 equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right (which shall be deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act shall be modified correspondingly.

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

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

(28) [S.I. 2010/1721](#).

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SCHEDULE 7

Articles 5 and 20

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land on Order plans</i>	<i>(3)</i> <i>Purposes for which temporary possession may be taken</i>	<i>(4)</i> <i>Authorised Work</i>
County of Warwickshire			
Borough of Nuneaton and Bedworth	3A, 3B	Worksite	Work No. 3
	4	Worksite and access for construction	Works Nos. 1 and 2
	9	Worksite and access for construction	Works Nos. 1, 2, 3 and 4
	12	Repairs to and strengthening of bridge and access across the bridge for construction	Works Nos. 1, 2, 3 and 4
	13, 14, 15	Worksite and access for construction	Bridge repair and strengthening Works Nos. 1, 2, 3 and 4
	18	Worksite	Works Nos. 1 and 2
	23	Vehicle holding area	Works Nos. 1, 2, 3 and 4
	27, 28, 29, 30, 31, 32	Construction of Work No. 4	Work No. 4

SCHEDULE 8

Article 30

STATUTORY UNDERTAKERS, ETC.

Apparatus of statutory undertakers, etc. on land acquired

1.—(1) Sections 271 to 274 of the 1990 Act (power to extinguish rights of statutory undertakers, etc. and power of statutory undertakers, etc. to remove or re-site apparatus) shall apply in relation to any land acquired or appropriated by Network Rail 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 Network Rail 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 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 Network Rail compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer communicate with any other public sewer or with a private sewage disposal plant.

(5) The provisions of the 1990 Act mentioned in sub-paragraph (1), as applied by that sub-paragraph, shall not have effect in relation to apparatus as respects which paragraph 2 or Part 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⁽²⁹⁾; and

“public utility undertakers” has the same meaning as in the Highways Act 1980⁽³⁰⁾.

Apparatus of statutory undertakers, etc. in stopped up street

2.—(1) Where a street is stopped up under article 8 (stopping up of street and extinguishment and creation of rights) 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.

⁽²⁹⁾ 2003 c. 21.

⁽³⁰⁾ 1980 c. 66.

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(2) Where a street is stopped up under article 8 (stopping up of street and extinguishment and creation of rights) any statutory utility whose apparatus is under, in, upon, over, along or across the street may and, if reasonably requested so to do by Network Rail, 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 as mentioned in sub-paragraph (a).

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

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

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

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions, except where this has been solely due to the nearest currently available type; 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 Network Rail, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this 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; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

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

(7) Sub-paragraphs (3) to (6) shall not apply where the authorised works constitute major transport works for the purposes of Part 3 of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works shall be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and
- (b) the allowable costs shall be borne by Network Rail 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 Highways Act 1980 or a public telecommunications provider as defined in paragraph 1(6).

Navigation undertakings

3.—(1) Subject to the following provisions of this paragraph, the powers conferred by article 7 (power to execute street works) to break up or open a street shall not be exercisable where the street, not being a highway maintainable at public expense (within the meaning of the Highways Act 1980)(31) is under the control or management of, or is maintainable by, a navigation authority except with the consent of the authority.

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

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

(4) If a person to which application for consent has been made under sub-paragraph (1) fails to notify Network Rail of its decision within 28 days of receiving an application for consent, that person shall be deemed to have granted consent.

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

SCHEDULE 9

Article 31

PROTECTION FOR SPECIFIED UNDERTAKERS

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

(2) The provisions of Schedule 8 (statutory undertakers, etc.), in so far as they relate to the removal of apparatus, shall not apply in relation to apparatus to which this Schedule applies.

2. In this Schedule—

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

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(32), belonging to or maintained by that undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;

(31) 1980 c. 66.

(32) 1989 c. 29.

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- (c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the undertaker under the Water Industry Act 1991⁽³³⁾; 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 of that Act,

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 in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

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

“undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986⁽³⁴⁾;
- (c) a water undertaker within the meaning of the Water Industry Act 1991; and
- (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

for the area of the authorised works, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

3. This Schedule does not apply to apparatus in respect of which the relations between Network Rail and the undertaker are regulated by the provisions of Part 3 of the 1991 Act.

4. Regardless of any provision in this Order or anything shown on the Order plans, Network Rail shall not acquire any apparatus otherwise than by agreement.

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

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

⁽³³⁾ 1991 c. 56.

⁽³⁴⁾ 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).

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

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

(5) The undertaker in question shall, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 37, and after the grant to the undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by Network Rail to be removed under the provisions of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if Network Rail gives notice in writing to the undertaker in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of Network Rail, that work, instead of being executed by the undertaker, shall be executed by Network Rail without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the undertaker.

(7) Nothing in sub-paragraph (6) shall authorise Network Rail to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

6.—(1) Where, in accordance with the provisions of this Schedule, Network Rail affords to an undertaker facilities and rights for the construction and maintenance in land of Network Rail 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 Network Rail and the undertaker in question or in default of agreement settled by arbitration in accordance with article 37 (arbitration).

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

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

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

7.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 5(2) that are near to, or will or may affect, any apparatus the removal of which has not

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been required by Network Rail under paragraph 5(2), Network Rail shall submit to the undertaker in question a plan, section and description of the works to be executed.

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

(3) Any requirements made by an undertaker under sub-paragraph (2) shall be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If an undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by Network Rail, reasonably requires the removal of any apparatus and gives written notice to Network Rail of that requirement, paragraphs 1 to 6 shall apply as if the removal of the apparatus had been required by Network Rail under paragraph 5(2).

(5) Nothing in this paragraph shall preclude Network Rail from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan, section and description.

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

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

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

(3) If in accordance with the provisions of this Schedule—

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by Network Rail or, in default of agreement, is not determined by arbitration in accordance with article 37 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the undertaker in question by virtue of sub-paragraph (1) shall be reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

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

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

- (a) bear and pay the cost reasonably incurred by that undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that undertaker for any other expenses, loss, damages, penalty or costs incurred by the undertaker,

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

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

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

10. Nothing in this Schedule shall affect the provisions of any enactment or agreement regulating the relations between Network Rail and an undertaker in respect of any apparatus laid or erected in land belonging to Network Rail on the date on which this Order is made.

SCHEDULE 10

Article 32

PROTECTION FOR OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

1.—(1) For the protection of any operator, the following provisions shall, unless otherwise agreed in writing between Network Rail and the operator, have effect.

(2) In this Schedule—

“BT” means British Telecommunications plc;

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system shall be construed in accordance with paragraph 1(3A) of that code;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

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“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act⁽³⁵⁾;

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

“operator” means the operator of an electronic communications code network.

2. The temporary stopping up or diversion of any highway under article 9 (temporary stopping up of streets) shall not affect any right of the operator under paragraph 9 of the electronic communications code to maintain any apparatus which, at the time of the stopping up or diversion, is in that highway.

3.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised works or their construction, or of any subsidence resulting from any of those works—

- (a) any damage is caused to any electronic communications apparatus belonging to BT (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 BT); or
- (b) there is any interruption in the supply of the service provided by BT, Network Rail shall bear and pay the cost reasonably incurred by BT in making good such damage or restoring the supply and shall—
 - (i) make reasonable compensation to BT for loss sustained by it; and
 - (ii) indemnify BT against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, BT by reason, or in consequence of, any such damage or interruption.

(2) Sub-paragraph (1) shall not apply to—

- (a) any apparatus in respect of which the relations between Network Rail and BT are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised works.

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

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

(5) Any difference arising between Network Rail and the operator under this Schedule shall be referred to and settled by arbitration under article 37 (arbitration).

⁽³⁵⁾ See section 106.

SCHEDULE 11

Article 33

PROTECTION FOR THE ENVIRONMENT AGENCY

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

(2) In this Schedule—

“the Agency” means the Environment Agency;

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

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

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

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

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

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

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

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

(2) Any such specified work shall not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 13.

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

- (a) shall not be unreasonably withheld;
- (b) shall be deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans for approval and, in the case of a refusal, accompanied by a statement of the grounds of refusal; and
- (c) may be given subject to such reasonable requirements as the Agency may make for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution, or in the discharge of its environmental duties or any other duties imposed on the Agency by section 7 of the Environment Act 1995⁽³⁶⁾.

(4) The Agency shall use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

(36) 1995 c. 25.

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3. Without limitation on the scope of paragraph 2, the requirements which the Agency may make under that paragraph include conditions requiring Network Rail at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

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

by reason of any specified work.

4.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 3, shall be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under this Schedule; and
- (b) to the reasonable satisfaction of the Agency,

and any officer of the Agency shall be entitled to watch and inspect the construction of such works.

(2) Network Rail shall give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is brought into use.

(3) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Schedule, the Agency may by notice in writing require Network Rail at Network Rail's own expense to comply with the requirements of this Schedule or (if Network Rail so elects and the Agency in writing consents, such consent not to be unreasonably withheld) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(4) Subject to sub-paragraph (5) and paragraph 8, if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served upon Network Rail, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any expenditure incurred by it in so doing shall be recoverable from Network Rail.

(5) In the event of any dispute as to whether sub-paragraph (3) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency shall not except in emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

5.—(1) Subject to the provisions of this Schedule and except to the extent that the Agency or another person is liable to maintain any such work and is not precluded by the exercise of the powers conferred by this Order from so doing, Network Rail shall from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation or on land held by Network Rail for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which Network Rail is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require Network Rail to repair and restore the work, or any part of such work, or (if Network Rail so elects and the Agency in

writing consents, such consent not to be unreasonably withheld), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to paragraph 8, if, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on Network Rail, Network Rail has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from Network Rail.

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

6. Subject to paragraph 8, if by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage shall be made good by Network Rail to the reasonable satisfaction of the Agency and if Network Rail fails to do so, the Agency may make good the same and recover from Network Rail the expense reasonably incurred by it in so doing.

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

(2) If by reason of—

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

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on Network Rail requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) Subject to paragraph 8, if within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, Network Rail fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and may recover from Network Rail the expense reasonably incurred by it in doing so.

(4) Subject to paragraph 8, in any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from Network Rail the reasonable cost of so doing provided that notice specifying those steps is served on Network Rail as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

8. Nothing in paragraphs 4(4), 5(3), 6, 7(3) and (4) shall authorise the Agency to execute works on or affecting an operational railway forming part of Network Rail's network without the prior consent in writing of Network Rail, such consent not to be unreasonably withheld.

9. Network Rail shall indemnify the Agency in respect of all costs, charges and expenses which the Agency may reasonably incur or have to pay or which it may sustain—

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

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

10.—(1) Without affecting the other provisions of this Schedule, Network Rail shall indemnify the Agency from all claims, demands, proceedings, costs, damages, expenses or loss, which may be made or taken against, recovered from, or incurred by, the Agency by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any damage to the fishery;
- (c) any raising or lowering of the water table in land adjoining the authorised works or any sewers, drains and watercourses;
- (d) any flooding or increased flooding of any such lands; or
- (e) inadequate water quality in any watercourse or other surface waters or in any groundwater,

which is caused by the construction of any of the specified works or any act or omission of Network Rail, its contractors, agents or employees whilst engaged upon the work.

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

11. The fact that any work or thing has been executed or done by Network Rail in accordance with a plan approved or deemed to be approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, shall not relieve Network Rail from any liability under the provisions of this Schedule.

12. For the purposes of Chapter 2 of Part 2 of the Water Resources Act 1991⁽³⁷⁾ (abstraction and impounding of water) and section 109 of that Act (as to structures in, over or under watercourses) as applying to the construction of any specified work, any consent or approval given or deemed to be given by the Agency under this Schedule with respect to such construction shall be deemed also to constitute a licence under that Chapter to obstruct or impede the flow of inland waters at that point by means of impounding works or, as the case may be, a consent or approval under section 109.

13. Any dispute arising between Network Rail and the Agency under this Schedule shall, if the parties agree, be determined by arbitration in accordance with article 37 (arbitration), but shall otherwise be determined by the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Transport acting jointly on a reference to them by Network Rail or the Agency, after notice in writing by one to the other.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Network Rail Infrastructure Limited to construct and maintain a new chord railway and associated works adjoining the West Coast Main Line railway (“WCML”), at Nuneaton to provide a new connection enabling freight trains coming from the east to cross over the WCML and join the WCML line going north without significantly interfering with existing railway services in the Nuneaton area. The Order authorises the acquisition of land and rights in land, and the use

(37) 1991 c. 57.

of land, for this purpose and confers authorising powers in connection with the construction and operation of the railway.

Copies of the Order plans and sections and the book of reference referred to in the Order may be inspected at the offices of the Company Secretary and Solicitor to Network Rail Infrastructure Limited at Kings Place, 90 York Way, London N1 9AG.