
STATUTORY INSTRUMENTS

2012 No. 2679

TRANSPORT AND WORKS, ENGLAND
TRANSPORT, ENGLAND

The Chiltern Railways (Bicester to
Oxford Improvements) Order 2012

Made - - - - 23rd October 2012

Coming into force - - 13th November 2012

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 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The Secretary of State, having considered the objections made and not withdrawn and the report of the person who held the inquiry, has determined to make an Order giving effect to the proposals comprised in the application with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 22nd October 2012.

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 15 to 17 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 Chiltern Railways (Bicester to Oxford Improvements) Order 2012 and comes into force on 13th November 2012.

(1) [S.I. 2006/1466](#).

(2) [1992 c. 42](#). Part 1 of this Act is amended by [S.I. 1995/1541](#), [1998/2226](#), [2000/3199](#) and [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⁾;
- “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;
- “bridleway” has the same meaning as in the Highways Act 1980⁽⁷⁾;
- “building” includes any structure or erection or any part of a building, structure or erection;
- “carriageway” has the same meaning as in the Highways Act 1980;
- “the Company” means The Chiltern Railway Company Limited (Company No. 3007939) whose registered office is at Great Central House, Marylebone Station, Melcombe Place, London NW1 6JJ;
- “the deposited plans” means the plans certified by the Secretary of State as the deposited plans for the purposes of this Order;
- “the deposited sections” means the sections certified by the Secretary of State as the sections for the purposes of this Order;
- “electronic transmission” means a communication transmitted—
- (a) by means of an electronic communications network; or
 - (b) by other means but while in electronic form;
- “footpath” and “footway” have 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 deposited plans;
- “the limits of land to be acquired or used” means the limits of land to be acquired or used shown on the deposited plans;
- “maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace, and “maintenance” is to 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 and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006⁽⁸⁾) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;
- “the Order limits” means the limits of deviation and the limits of land to be acquired or used;

(3) 1961 c. 33.
(4) 1965 c. 56.
(5) 1990 c. 8.
(6) 1991 c. 22.
(7) 1980 c. 66.
(8) 2006 c. 46.

“owner”, in relation to land, has the same meaning as in the Acquisition of Land Act 1981⁽⁹⁾;
“the scheduled works” means the works specified in Schedule 1 (scheduled works) or any part of them;
“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, on or under land or in the air-space above its surface.

(3) 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 are 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⁽¹⁰⁾ are incorporated in this Order—

section 46 (crossing of roads—level crossings), subject to paragraph (4);
section 58 (company to repair roads used by them), except for the words from “and if any question” to the end;
section 61 (company to make sufficient approaches and fences to highways crossing on the level);
section 68 (accommodation works by company);
section 71 (additional accommodation works by owners), except for the words “or directed by such justices to be made by the company” and “or, in case of difference, as shall be authorised by two justices”;
sections 72 and 73 (supplementary provisions relating to accommodation works);
section 75 (omission to fasten gates);
section 77 (presumption that minerals excepted from acquisition of land);
sections 78 to 85E and Schedules 1 to 3 (minerals under railways), as respectively substituted and inserted by section 15 of the Mines (Working Facilities and Support) Act 1923⁽¹¹⁾;
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⁽¹²⁾ is incorporated in this Order.

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

“the company” means the Company;
“goods” includes any thing conveyed on the railway authorised to be constructed by this Order;
“lease” includes an agreement for a lease;

⁽⁹⁾ 1981 c. 67.

⁽¹⁰⁾ 1845 c. 20.

⁽¹¹⁾ 1923 c. 20.

⁽¹²⁾ 1863 c. 92.

“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 works;

“the special Act” means this Order;

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

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

Application of the 1991 Act

4.—(1) Works executed under this Order in relation to a highway which consists of or includes a carriageway are treated for the purposes of Part 3 of the 1991 Act (street works in England and Wales) as major transport works if—

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

(2) The provisions of the 1991 Act mentioned in paragraph (3) which, together with other provisions of that Act, apply in relation to the execution of street works and any regulations made or code of practice issued or approved under those provisions apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the Company under the powers conferred by article 10 (temporary stopping up of streets) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

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

- section 54 (advance notice of certain works), subject to paragraph (4);
- section 55 (notice of starting date of works), subject to paragraph (4);
- section 57 (notice of emergency works);
- section 59 (general duty of street authority to co-ordinate works);
- section 60 (general duty of undertakers to co-operate);
- section 68 (facilities to be afforded to street authority);
- section 69 (works likely to affect other apparatus in the street);
- section 76 (liability for cost of temporary traffic regulation);
- section 77 (liability for cost of use of alternative route); and

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

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

(5) Nothing in article 12 (construction and maintenance of new or altered streets)—

- (a) prejudices the operation of section 87 of the 1991 Act (prospectively maintainable highways); and the Company is not by reason of any duty under that article to maintain a street to be taken to be a street authority in relation to that street for the purposes of Part 3 of that Act; or
- (b) has effect in relation to street works with regard to which the provisions of Part 3 of the 1991 Act apply.

PART 2

WORKS PROVISIONS

Principal powers

Power to construct and maintain works

5.—(1) The Company 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 deposited plans and in accordance with the levels shown on the deposited sections.

(3) The Company may on the land specified in columns (1) and (2) of Schedule 2 (acquisition of certain lands for ancillary works) carry out and maintain any works specified in relation to that land in column (3) of that Schedule with all necessary works and conveniences in connection with those works.

(4) Subject to paragraph (6), the Company may do such of the following as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works—

- (a) construct and maintain such offices and other buildings, yards, machinery, plant, apparatus and other works and conveniences as the Company thinks fit;
- (b) make, provide and maintain all such approaches, bridges, subways, interchanges, roundabouts, turning places, lifts, stairs, escalators, ramps, passages, means of access, shafts and stagings as the Company thinks fit;
- (c) carry out and maintain railway, signalling and permanent way works;
- (d) make and maintain junctions and communications (including the provision of steps or ramps for the use of persons on foot) with any highway or access way intersected or interfered with by, or contiguous to, any of those works, and widen or alter any highway or access way for the purpose of connecting it with any of those works or another highway, or of crossing under or over the highway or access way;
- (e) construct, provide and maintain all such embankments, aprons, abutments, retaining walls, wing walls, culverts and other works as may be necessary or convenient;
- (f) alter or remove any structure erected upon any highway or adjoining land;
- (g) alter the position of apparatus, including mains, sewers, drains, pipes, cables and street furniture;
- (h) alter the course of, or otherwise interfere with, a watercourse other than a navigable watercourse;
- (i) carry out and maintain landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the scheduled works; and
- (j) carry out and maintain works for the benefit or protection of premises affected by the scheduled works.

(5) Subject to paragraph (6), the Company may carry out and maintain such other works (of whatever nature) as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works, other than works that would interfere with a navigable watercourse.

(6) Paragraphs (4) and (5) 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 Schedule 2 or in columns (1) and (2) of Schedule 11 (land of which temporary possession may be taken) in each case for the purpose specified in relation to that land in column (3) of that Schedule.

Power to deviate

6. In constructing or maintaining any of the scheduled works, the Company may—
- (a) deviate laterally from the lines or situations shown on the deposited plans to the extent of the limits of deviation for that work; and
 - (b) deviate vertically from the levels shown on the deposited 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 keep apparatus in streets

7.—(1) The Company may, for the purposes of or in connection with the construction, maintenance and use of the authorised works, place and maintain in any street within the Order limits and in any street having a junction with such a street any work, equipment or apparatus including, without limitation on the scope of that power, foundations, road islands, substations, electric lines and any electrical or other apparatus.

- (2) In this article—
- (a) “apparatus” has the same meaning as in Part 3 of the 1991 Act;
 - (b) “electric line” has the meaning given by section 64(1) of the Electricity Act 1989⁽¹³⁾; and
 - (c) the reference to any work, equipment, apparatus or other thing in a street includes a reference to any work, equipment, apparatus or other thing under, over, along or upon the street.

Power to execute street works

8.—(1) The Company may, for the purposes of the authorised works, enter upon so much of any of the streets specified in Schedule 3 (streets subject to street works) as is within the Order limits and may—

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

(13) 1989 c. 29.

(2) This article is subject to paragraph 3 of Schedule 13 (provisions relating to statutory undertakers etc.).

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

Stopping up of streets

9.—(1) Subject to the provisions of this article, the Company may, in connection with the construction of the authorised works, stop up each of the streets specified in columns (1) and (2) of Parts 1 and 2 of Schedule 4 (streets to be stopped up) to the extent specified, by reference to the letters and numbers shown on the deposited plans, in column (3) of those Parts of that Schedule.

(2) No street specified in columns (1) and (2) of Part 1 of Schedule 4 (being a street to be stopped up for which a substitute is to be provided) is to be wholly or partly stopped up under this article unless—

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

(3) No street specified in columns (1) and (2) of Part 2 of Schedule 4 (being a street to be stopped up for which no substitute is to be provided) is to be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the land which abuts on either side of the street to be stopped up.

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

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

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

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

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

(7) This article is subject to paragraph 2 of Schedule 13 (provisions relating to statutory undertakers etc.) and paragraph 4 of Schedule 14 (for the protection of specified undertakers).

Temporary stopping up of streets

10.—(1) The Company, 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 limitation on the scope of paragraph (1), the Company may use any street stopped up under the powers conferred by this article as a temporary working site.

(3) The Company must 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), the Company may exercise the powers conferred by this article in relation to the streets specified in columns (1) and (2) of Schedule 5 (streets to be temporarily stopped up) to the extent specified in column (3) of that Schedule.

(5) The Company must 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 must not be unreasonably withheld.

(6) Any person who suffers loss by the suspension of any private right of way under this article is 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 the Company of its decision within 28 days of receiving an application for consent under paragraph (5)(b), that street authority is deemed to have granted consent.

Access to works

11.—(1) The Company may, for the purposes of the authorised works—

- (a) form and lay out means of access, or improve existing means of access, in the locations specified in columns (1) and (2) of Schedule 6 (access to works) at or about the points marked ‘A’ on the deposited plans; and
- (b) with the approval of the highway authority, such approval not to be unreasonably withheld, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the Company reasonably requires for the purposes of the authorised works.

(2) If a highway authority fails to notify the Company of its decision within 28 days of receiving an application for approval under paragraph (1)(b), that highway authority is deemed to have given approval.

Construction and maintenance of new or altered streets

12.—(1) With the exception of the streets specified in paragraph (6), any street to be constructed under this Order must be completed to the reasonable satisfaction of the highway authority and must, unless otherwise agreed, be maintained by and at the expense of the Company for a period of 12 months from its completion and, at the expiry of that period, by and at the expense of the highway authority.

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

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

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

such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

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

- (a) the character of the street and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the Company knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street;
- (e) where the Company could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

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

(6) The excepted streets in paragraph (1) are—

- (a) the access road on the land numbered 10036, 10a001, 10a002, 10a003, 10a004, 10a009, 10b001 and 10b002 in the district of Cherwell on the deposited plans;
- (b) the accommodation access road on the land numbered 11008, 11009, 12002, 12003, 12004, 12a003 and 12b001 in the district of Cherwell on the deposited plans;
- (c) the accommodation access road on the land numbered 12009, 12c001, 12c002 and 12c003 in the district of Cherwell on the deposited plans;
- (d) the accommodation access road on the land numbered 14007, 14009, 14016, 15005, 15a001, 15a002 and 15a003 in the district of Cherwell on the deposited plans; and
- (e) the accommodation access road on the land numbered 20023, 20024, 21003, 21004, 21a001, 21a002, 21a003, 21a004, 21b002, 21b003 and 21b004 in the district of Cherwell on the deposited plans.

Construction of bridges and tunnels

13.—(1) Any bridge or tunnel to be constructed or reconstructed under this Order for carrying a highway over or under a railway must be constructed or reconstructed in accordance with the plans and specifications approved by the highway authority, but such approval must not be unreasonably withheld.

(2) If a highway authority fails to notify the Company of its decision within 28 days of receiving an application for approval under paragraph (1) that highway authority is deemed to have given approval.

Agreements with street authorities

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

- (a) the construction of any new street (including any structure carrying the street over or under a railway) under the powers conferred by this Order;
- (b) the strengthening or improvement of any street under the powers conferred by this Order;

- (c) the maintenance of the structure of any bridge or tunnel carrying a street over or under a railway;
 - (d) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
 - (e) the execution in the street of any of the works referred to in article 8(1) (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.

Level Crossings

Replacement and closure of road level crossings

15.—(1) Subject to paragraph (3), each of the level crossings specified in columns (1) and (2) of Schedule 7 (replacement and closure of road level crossings) are to be stopped up and discontinued.

(2) Subject to paragraph (3), paragraph 2 of Schedule 13 (provisions relating to statutory undertakers etc.) and paragraph 4 of Schedule 14 (for the protection of specified undertakers), upon the stopping up and discontinuance of each of the level crossings referred to in paragraph (1), any right of way over the part of the street specified in relation to it in column (3) of Schedule 7 is extinguished.

(3) Paragraphs (1) and (2) are not to take effect with respect to a level crossing specified in Schedule 7 until the accommodation works specified in relation to it in column (4) of that Schedule have been completed to the reasonable satisfaction of the street authority and are open for use.

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

Replacement and closure of footpath level crossings

16.—(1) Subject to paragraph (3), each of the footpath level crossings specified in columns (1) and (2) of Schedule 8 (replacement and closure of footpath level crossings) are stopped up and discontinued.

(2) Subject to paragraph (3) and paragraph 2 of Schedule 13 (provisions relating to statutory undertakers etc.), upon the stopping up and discontinuance of a footpath level crossing referred to in paragraph (1), any right of way over the part of the footpath specified in relation to it in column (3) of Schedule 8 is extinguished.

(3) Paragraphs (1) and (2) are not to take effect with respect to a footpath specified in columns (1) and (3) of Schedule 8 until the replacement footpath specified in relation to it in column (4) of that Schedule has been provided to the reasonable satisfaction of the street authority and is open for use.

(4) On completion of the construction of the replacement footpath specified in column (4) of Schedule 8 the Company must submit a written request to the street authority for written approval for the replacement footpath which must not be unreasonably withheld and which must be given within 28 days of the street authority receiving a request for approval under this paragraph. If the street authority fails to notify the Company of a decision by the expiry of 28 days from receiving a request for approval, the street authority is deemed to have granted approval.

(5) If the street authority intimates its disapproval in accordance with paragraph (4), the matter is to be determined in accordance with article 57 (arbitration).

(6) In providing the replacement footpaths specified in column (4) of Schedule 8, the Company may within the Order limits erect barriers and signs and carry out or provide any ancillary works or conveniences, subject to the agreement of the highway authority which agreement must not be unreasonably withheld.

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

(8) Any replacement footpath specified in column (4) of Schedule 8 provided under this article is to be a public footpath and, subject to paragraphs (9) to (12), in relation to that replacement footpath section 28 of the Highways Act 1980⁽¹⁴⁾ (compensation for loss caused by public path creation order) applies as if the right of way over the replacement footpath had been created by a public path creation order.

(9) In its application by virtue of paragraph (8), section 28 of the Highways Act 1980 has effect with the modifications mentioned in paragraphs (10) to (12).

(10) In subsection (1), for the words “the authority by whom the order was made” there are substituted the words “The Chiltern Railway Company Limited”.

(11) For subsection (2), there is substituted—

“(2) A claim for compensation under this section is to be made to The Chiltern Railway Company Limited in writing within 6 months from the coming into force of the Chiltern Railways (Bicester to Oxford Improvements) Order 2012⁽¹⁵⁾ and is to be served on The Chiltern Railway Company Limited by delivering it at, or by sending it by pre-paid post to, the registered office of The Chiltern Railway Company Limited.”

(12) Subsection (3) is omitted.

(13) For the purposes of paragraphs (8) to (12), section 307 of the Highways Act 1980 (disputes as to compensation which are to be determined by Upper Tribunal and related provisions), in its application to section 28 of the Highways Act by virtue of section 307(1), has effect as if in subsection (2) for the words “the authority from whom the compensation in question is claimed”, there were substituted the words “The Chiltern Railway Company Limited”.

(14) In this article any reference to a footpath or a footpath level crossing, in relation to the Beebont level crossing or the Water Eaton No. 5 level crossing, is to be construed as a reference to a bridleway or a bridleway level crossing.

Accommodation crossings

17.—(1) Subject to paragraph (2) and regardless of anything in section 68 (accommodation works by the Company) of the Railways Clauses Consolidation Act 1845⁽¹⁶⁾ as incorporated in the Oxford and Bletchley Junction Railway Act 1846⁽¹⁷⁾, the Buckinghamshire Railways Act 1850⁽¹⁸⁾ or any other enactment or instrument, all public or private rights of way (if any) across the railway by means of the accommodation facilities specified in columns (1) and (2) of Parts 1 and 2 of Schedule 9 (accommodation crossings), are extinguished.

(2) Paragraph (1) does not take effect with respect to the extinguishment of the private rights of way by means of an accommodation facility specified in columns (1) and (2) of Part 1 of Schedule 9 (accommodation crossings for which a substitute is to be provided) until the accommodation facility specified in relation to it in column (4) of Part 1 of that Schedule has been provided.

⁽¹⁴⁾ 1980 c. 66.

⁽¹⁵⁾ S.I. 2012/2679].

⁽¹⁶⁾ 1845 c. 20.

⁽¹⁷⁾ 1846 c. lxxxii.

⁽¹⁸⁾ 1850 c. vi.

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

Supplemental powers

Temporary closure of part of Rewley Abbey Stream and Castle Mill Stream

18.—(1) In this article “the waterways” mean—

- (a) so much of the Rewley Abbey Stream numbered 31007, 31008, 31009, 31012, 31019, 31020 and 31021 on the deposited plans, in the city of Oxford as lies within the Order limits; and
- (b) so much of the Castle Mill Stream numbered 30005, 30006 and 30007 on the deposited plans, in the city of Oxford as lies within the limits of deviation.

(2) The Company, during and for the purpose of the construction of Work Nos. 3 and 3A, may temporarily close and de-water any part of the waterways and divert barges and other boats from any part of the waterways.

(3) During the period of closure referred to in paragraph (2), any rights of navigation along the waterway are suspended and any obligations of any person to maintain for navigation the waterway or part of it so closed are suspended and unenforceable against that person.

(4) Any person who suffers loss by the suspension of any right under this article is entitled to compensation paid by the Company, the amount of which is to be determined in the case of dispute by the tribunal.

Discharge of water

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

(2) Any dispute arising from the exercise of the powers conferred by paragraph (1) to connect to or use a public sewer or drain is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(19).

(3) The Company must 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 must not be unreasonably withheld.

- (4) The Company must 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 must not be unreasonably withheld; and
 - (b) where that person has been given the opportunity to supervise the making of the opening.

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

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

(7) Nothing in this article obviates the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2010(20).

(8) If a person who receives an application for consent or approval fails to notify the Company of a decision within 28 days of receiving an application for consent under paragraph (3) or approval under paragraph (4)(a) that person is 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 company; and
- (b) other expressions, excluding watercourses, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

Protective works to buildings, roads or apparatus of a statutory undertaker

20.—(1) Subject to the following provisions of this article and article 31 (limitation of powers), the Company may at its own expense and from time to time carry out such protective works to—

- (a) any building; or
- (b) any road; or
- (c) any apparatus of a statutory undertaker

lying within the Order limits as the Company considers to be necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the construction in the vicinity of the building, road or apparatus of a statutory undertaker of any part of the authorised works; or
- (b) after the completion of the construction of that part of the authorised works in the vicinity of the building, road or apparatus of a statutory undertaker at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised works is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised the Company may enter and survey any building, go onto and survey any road or access and survey any apparatus of a statutory undertaker falling within paragraph (1) and any land within the curtilage of the building or in which the apparatus is located.

(4) For the purpose of carrying out protective works under this article to a building, road or apparatus of a statutory undertaker the Company may (subject to paragraphs (5) and (6))—

- (a) enter the building, go onto the road or access the apparatus and any land within the curtilage of the building or in which the apparatus is located; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building (but outside its curtilage), or adjacent to the road or land in which apparatus is located, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building, road or apparatus;
- (b) a right under paragraph (3) to enter a building, go onto a road or access apparatus and land within the curtilage of the building or in which the apparatus is located;
- (c) a right under paragraph (4)(a) to enter a building, go onto a road or access apparatus and land within the curtilage of the building or in which the apparatus is located; or

(d) a right under paragraph (4)(b) to enter land,

the Company must, except in the case of emergency, serve on the owners and occupiers of the building or land or owner of the road or the apparatus not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land or owners of the road or the apparatus concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land, go onto a road or access apparatus to be referred to arbitration under article 57 (arbitration).

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

(8) Where—

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

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

(9) Without prejudice to article 56 (no double recovery) nothing in this article relieves the Company from any liability to pay compensation under section 10(2) of the 1965 Act.

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

(11) In this article—

“protective works” in relation to a building, road or apparatus means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building, road or apparatus by the construction, maintenance or operation of the authorised works;
- (b) any works the purpose of which is to remedy any damage which has been caused to the building, road or apparatus by the construction, maintenance or operation of the authorised works; and
- (c) any works the purpose of which is to secure the safe operation of the authorised works or to prevent or minimise the risk of such operation being disrupted; and

“road” includes any structures supporting the road.

Power to survey and investigate land

21.—(1) Subject to article 31 (limitation of powers), the Company may for the purposes of this Order—

- (a) survey or investigate any land shown within the Order limits or which may be affected by the authorised works;
- (b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions as the Company thinks fit on the land to investigate the nature of the surface layer and subsoil and remove soil samples;

- (c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on the land;
 - (d) place on, leave on and remove from the land apparatus for use in connection with the surveying and investigation of land and making of trial holes; and
 - (e) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (d).
- (2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1), unless at least 7 days' notice has been served on every owner and occupier of the land.
- (3) Any person entering land under this article on behalf of the Company—
- (a) must, if so required, before or after entering the land produce written evidence of authority to do so; and
 - (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.
- (4) No trial holes are to 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 must not be unreasonably withheld.
- (5) The Company must 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 obviates the need to obtain scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979(21).
- (7) If either a highway authority or a street authority fails to notify the Company of its decision within 14 days of receiving an application for consent under paragraph (4), that authority is deemed to have granted consent.

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

- 22.**—(1) Subject to article 31 (limitation of powers), the Company may acquire compulsorily—
- (a) so much of the land shown on the deposited plans within the limits of deviation as land to be acquired compulsorily and described in the book of reference as may be required for the purposes of the authorised works; and
 - (b) so much of the land specified in columns (1) and (2) of Schedule 2 (acquisition of certain lands for ancillary works) (being land shown on the deposited plans and described in the book of reference) as may be required for the purpose specified in relation to that land in column (3) of that Schedule,

and may use any land so acquired for those purposes or for any other purposes that are ancillary to its railway undertaking.

(21) 1979 c. 46.

(2) This article is subject to article 29 (temporary use of land for construction of works).

Application of Part 1 of the 1965 Act

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

- (a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981⁽²²⁾ applies; and
- (b) as if this Order were a compulsory purchase order under that Act.

(2) Part 1 of the 1965 Act, as applied by paragraph (1), has effect as if section 4 (which provides a time limit for compulsory purchase of land) and paragraph 3(3) of Schedule 3 (which makes provision as to the giving of bonds) were omitted.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

24.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981⁽²³⁾ applies as if this Order were a compulsory purchase order.

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

(3) In section 3 (preliminary notices) for subsection (1) there is 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 must 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 is substituted “(1)” and after “given” there is inserted “and published”.

(5) In that section, for subsections (5) and (6) there is 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 is inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) is omitted.

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

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

⁽²²⁾ 1981 c. 67.

⁽²³⁾ 1981 c. 66.

Power to acquire new rights

25.—(1) Subject to article 31 (limitation of powers), the Company may acquire compulsorily such easements or other rights over any land referred to in paragraph (1)(a) or (b) of article 22 (power to acquire land) as may be required for any purpose for which that land may be acquired under that provision, by creating them as well as by acquiring easements or other rights already in existence.

(2) The Company may impose restrictive covenants affecting any land referred to in article 27(1) (cases where powers of acquisition limited to ground anchor rights) as may be required for the purposes, referred to in article 27(5).

(3) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 10 (modification of compensation and compulsory purchase enactments for creation or imposition of new rights)) where the Company acquires a right over land or the benefit of a covenant over land under paragraph (1) or article 27(5) the Company is not required to acquire a greater interest in that land.

(4) Schedule 10 has 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 or the imposition of a restrictive covenant under article 27(5).

(5) Without limitation on the scope of paragraph (1), the rights which may be acquired under that paragraph include the acquisition of rights over—

- (a) the land numbered 11005, 11008, 11009, 12002, 12003, 12004, 12a003, 12b001 in the district of Cherwell on the deposited plans to provide a means of vehicular access for the benefit of the owners and occupiers of land affected by the closure of Manor Farm Crossing;
- (b) the land numbered 11008, 11009, 12002, 12003, 12004, 12a003 and 12b001 in the district of Cherwell on the deposited plans to provide a means of vehicular access for the benefit of the owners and occupiers of land affected by the closure of Holts Farm Crossing; and
- (c) the land numbered 16a001, 16a002, 16a003, 16a008, 16a009 and 17a001 in the district of Cherwell on the deposited plans to provide a means of vehicular access for the benefit of the owners and occupiers of land affected by the closure of Brookfurlong Farm Crossing.

Power to acquire airspace only

26.—(1) Subject to article 31 (limitation of powers), the Company may acquire compulsorily so much of, or such rights in, the airspace over the land referred to in paragraph (1)(a) or (b) of article 22 (power to acquire land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the Company acquires any part of or rights in the airspace over land under paragraph (1) it is not required to acquire an interest in any other part of the land.

Cases where powers of acquisition limited to ground anchor rights

27.—(1) This article applies to the land numbered 26012, 26013, 26014, 26015 and 26016 in the City of Oxford shown on the deposited plans.

(2) The Company's powers of compulsory acquisition under article 22 (power to acquire land) as respects the land referred to in paragraph (1) are limited to the acquisition of ground anchor rights in the subsoil of the land and the imposition of restrictive or other covenants under paragraph (5).

(3) Where the Company acquires ground anchor rights in the subsoil of land to which this article applies or imposes a covenant under paragraph (5) affecting the land, it is not required to acquire a greater interest in the land or any other interest in any part of it.

(4) In this article “ground anchor rights” means—

- (a) rights to insert ground anchors or soil nails into the subsoil, or to carry out other subsoil works, for the purposes of strengthening and stabilising Wolvercot Tunnel; and
- (b) rights to maintain the ground anchors, soil nails or other subsoil works referred to in sub-paragraph (a).

(5) In addition to acquiring ground anchor rights in the land referred to in paragraph (1), the Company may impose such restrictive or other covenants affecting the land as may be required for the purposes of maintaining or protecting the ground anchors, soil nails or other subsoil works referred to in paragraph (4)(a).

(6) References in this article to the subsoil of land are references to the subsoil lying more than 3 metres beneath the level of the surface of the land; and for this purpose “the level of the surface of the land” means—

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

Rights under or over streets

28.—(1) Subject to article 31 (limitation of powers), the Company may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised works and may use the subsoil or air-space for those purposes or any other purpose ancillary to its railway undertaking.

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

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

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

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

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

Temporary possession of land

Temporary use of land for construction of works

29.—(1) Subject to article 31 (limitation of powers), the Company 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 11 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the authorised works (or any of those works) specified in column (4) of that Schedule; and

- (ii) any other land within the Order limits in respect of which no notice of entry 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 that land; and
 - (d) construct any permanent works specified in relation to that land in column (3) of Schedule 11 or any other permanent mitigation works.
- (2) Not less than 14 days before entering upon and taking temporary possession of land under this article the Company must serve notice of the intended entry on the owners and occupiers of the land.
- (3) The Company may not, without the agreement of the owners of the land, remain in possession of any land under this article —
- (a) in the case of land specified in columns (1) and (2) of Schedule 11, 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 11; 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 temporary possession of the land was taken unless the Company 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 Declarations) Act 1981.
- (4) Before giving up possession of land of which temporary possession has been taken under this article, the Company must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the Company is not required to replace a building removed under this article.
- (5) The Company must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.
- (6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.
- (7) Without prejudice to article 56 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5).
- (8) The powers of compulsory acquisition of land conferred by this Order do not apply in relation to the land referred to in paragraph (1)(a)(i) except that the Company is not precluded from acquiring new rights over any part of that land under article 25 (power to acquire new rights).
- (9) Where the Company takes possession of land under this article, it is not required to acquire the land or any interest in it.
- (10) Section 13 of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 23(1) (application of Part 1 of the 1965 Act).

Temporary use of land for maintenance of works

30.—(1) Subject to paragraph (2) and article 31 (limitation of powers), at any time during the maintenance period relating to any of the scheduled works, the Company may—

- (a) enter upon and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the work or any ancillary works connected with it or securing the safe operation of any such work; and
 - (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.
- (2) Paragraph (1) does not authorise the Company to take temporary possession of—
- (a) any house or garden belonging to a house; or
 - (b) any building (other than a house) if it is for the time being occupied.
- (3) Not less than 28 days before entering upon and taking temporary possession of land under this article the Company must serve notice of the intended entry on the owners and occupiers of the land.
- (4) The Company may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of works for which possession of the land was taken.
- (5) Before giving up possession of land of which temporary possession has been taken under this article, the Company must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.
- (6) The Company must 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, is to be determined under Part 1 of the 1961 Act.
- (8) Without prejudice to article 56 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).
- (9) Where the Company takes possession of land under this article, it is not required to acquire the land or any interest in it.
- (10) Section 13 of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 23(1) (application of Part 1 of the 1965 Act).
- (11) In this article, "the maintenance period", in relation to a scheduled work, means the period of 5 years beginning with the date on which the work is opened for use.

Supplemental provisions

Limitation of powers

31.—(1) This article applies to the land numbered 04036, 04037, 04038, 04039, 04041, 04042, 04043, 04044, 04045, 04046, 04047, 04048, 04049, 04050, 04052, 04053, 04055, 04056, 04a001, 04a002 and 18009 in the district of Cherwell shown on the deposited plans.

(2) The Company's powers under article 20 (protective works to buildings, roads or apparatus of a statutory undertaker), article 21 (power to survey and investigate land), article 22 (power to acquire land), article 25 (power to acquire new rights), article 26 (power to acquire airspace only), article 28 (rights under or over streets), article 29 (temporary use of land for construction of works) and article 30 (temporary use of land for maintenance of works) do not apply in respect of the land referred to in paragraph (1).

Compensation

Disregard of certain interests and improvements

32.—(1) In assessing the compensation payable to any person on the acquisition from that person of any land under this Order, the tribunal must 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

33.—(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 must 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 25 (power to acquire new rights), the tribunal must set off against the value of the rights so acquired—

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

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

(3) The 1961 Act has 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

34.—(1) This article applies instead of section 8(1) of the 1965 Act (as applied by article 23 (application of Part 1 of the 1965 Act)) 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 the Company a counter-notice objecting to the sale of the land subject to the notice to treat which states that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner must 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 must sell only the land subject to the notice to treat is, unless the Company agrees to take the land subject to the counter-notice, to 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 must 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 is 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 is deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the Company is authorised to acquire compulsorily under this Order.

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

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

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

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

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the Company must 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

35.—(1) Subject to paragraph (6), all private rights of way over land subject to compulsory acquisition under this Order are extinguished—

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

whichever is the sooner.

(2) Subject to paragraph (6), in respect of land owned by the Company or Network Rail and required for the purposes of this Order, all private rights of way are extinguished on the appropriation of the land for any of those purposes by the Company or Network Rail.

(3) Subject to paragraph (6), all private rights of way over land of which the Company takes temporary possession under this Order are suspended and unenforceable for as long as the Company remains in lawful possession of the land.

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

(5) This article is subject to paragraph 6 of Schedule 14 (for the protection of specified undertakers) and 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 13 (provisions relating to statutory undertakers etc.) applies.

(6) Paragraphs (1), (2) and (3) have effect subject to—

- (a) any notice given by the Company before the completion of the acquisition of the land, the Company's appropriation of it, the Company's entry onto it or the Company's taking temporary possession of it that any or all of those paragraphs do 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 the Company and the person in or to whom the right of way in question is vested or belongs.

(7) Any such agreement as is mentioned in sub-paragraph (6)(b) which 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, is 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

36.—(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 is to be served under Part 1 of the 1965 Act as applied to the acquisition of land by article 23 (application of Part 1 of the 1965 Act); and
- (b) no declaration is to be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981(24), as applied by article 24 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The powers conferred by article 29 (temporary use of land for construction of works) cease at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents

(24) 1981 c. 66.

the Company 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

Traffic regulation

37.—(1) Subject to the provisions of this article the Company may, for the purposes and during the construction of the authorised works and with the consent of the traffic authority in whose area the relevant street is situated (such consent not to be unreasonably withheld)—

- (a) prohibit or restrict the parking, stopping, waiting or the loading or unloading of vehicles, at any time, in the relevant streets;
- (b) suspend temporarily the use of any parking place within a relevant street; and
- (c) suspend or revoke any traffic regulation order in so far as it is inconsistent with any prohibition or restriction made by the Company under this paragraph.

(2) The Company must consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (3).

(3) The Company must not exercise the powers of this article unless it has—

- (a) given not less than 6 weeks’ notice in writing of its intention to do so to the chief officer of police and the traffic authority in whose area the relevant streets are situated; and
- (b) not less than 7 days before exercising any power under this article, given notice of the intention to exercise the power of this article by publishing a notice in a local newspaper circulating in the area.

(4) Any prohibition, restriction or other provision made by the Company under paragraph (1) has effect as if duly made by the traffic authority in whose area the street is situated as a traffic regulation order under the Road Traffic Regulation Act 1984⁽²⁵⁾ and the instrument by which it is effected may specify savings to which the prohibition, restriction or other provision is subject.

(5) Any prohibition or restriction made by the Company under paragraph (1) does not apply to any vehicle of a statutory utility for so long as it is engaged in connection with the laying, erection, alteration, repair or inspection of any apparatus of that utility.

(6) In this article—

“the relevant streets” means the carriageway of the streets specified in columns (1) and (2) of Schedule 12 (traffic regulation); and

“statutory utility” means a statutory undertaker for the purposes of the Highways Act 1980⁽²⁶⁾ or a public communications provider as defined in section 151(1) of the Communications Act 2003⁽²⁷⁾.

Defence to proceedings in respect of statutory nuisance

38.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990⁽²⁸⁾ (summary proceedings by person aggrieved by statutory nuisances) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so

⁽²⁵⁾ 1984 c. 27.

⁽²⁶⁾ 1980 c. 66.

⁽²⁷⁾ 2003 c. 21.

⁽²⁸⁾ 1990 c. 43.

as to be prejudicial to health or a nuisance), no order is to be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows—

- (a) that the nuisance relates to premises used by the Company for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to 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, or a consent given under section 61 or 65, of the Control of Pollution Act 1974⁽²⁹⁾; 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—
- (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),

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

(3) The provisions of this article are without prejudice to the application to the authorised works of section 122 of the Railways Act 1993⁽³⁰⁾ (statutory authority as a defence to actions in nuisance, etc.) or any rule of common law having similar effect.

Planning permission

39. 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 (or any of them) is to be treated as specific planning permission for the purposes of section 264(3)(a) of that Act (cases in which land is to be treated as operational land for the purposes of that Act).

Power to lop trees overhanging the authorised works

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

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

(2) In exercising the powers conferred by paragraph (1), the Company must do no unnecessary damage to any tree or shrub and must 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, is to be determined under Part 1 of the 1961 Act.

Open Space at Tubbs Lane

41.—(1) As from the date on which the Company enters onto the Tubbs Lane open space under section 11(1) of the 1965 Act or section 8 of the Compulsory Purchase (Vesting Declarations) Act

⁽²⁹⁾ 1974 c. 40.

⁽³⁰⁾ 1993 c. 43. As amended by the Transport Act 2000 (c. 38) and the Railways Act 2005 (c. 14).

1981(31) the Tubbs Lane open space land is discharged from all rights, trusts and incidents to which it was previously subject.

(2) In this article “the Tubbs Lane open space” means the land numbered 03023 in the district of Cherwell on the deposited plans and forming part of an open space within the meaning of section 19(1) of the Acquisition of Land Act 1981(32) which the Secretary of State has certified as not exceeding 209 square metres and that the giving in exchange of other land for the Tubbs Lane open space is unnecessary for the purposes of section 19(1) of that Act.

Power to operate and use railway

42.—(1) The Company may operate and use the railway and other authorised works as a system, or part of a system, of transport for the carriage of passengers and goods.

(2) Nothing in this Order, or in any enactment incorporated with or applied by this Order, affects the operation of Part 1 of the Railways Act 1993.

Power to transfer undertaking

43.—(1) The Company may, with the consent of the Secretary of State—

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

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

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

Agreements with Network Rail

44.—(1) Without prejudice to article 43 (power to transfer undertaking), the Company and Network Rail may enter into and carry into effect agreements with respect to the construction, maintenance, use and operation of—

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

by Network Rail or by the Company, or by the Company and Network Rail jointly.

(2) Any agreement made pursuant to the powers conferred by this article may contain such incidental, consequential or supplementary provisions as may be agreed, including (but without limitation on the scope of paragraph (1)), provisions—

- (a) with respect to the defraying of, or the making of contributions towards, the cost of such construction, maintenance, use and operation as are referred to in paragraph (1) by the Company or by Network Rail or by the Company and Network Rail jointly;
- (b) for the exercise by Network Rail, or by the Company, or by Network Rail and the Company jointly, of all or any of the powers and rights of Network Rail and the Company (as the

(31) 1981 c. 66.

(32) 1981 c. 67.

case may be) in respect of any of the authorised works and any works required for the purposes of, or in connection with, those works; and

- (c) without limitation on the scope of sub-paragraph (b), for the exercise by Network Rail, or by Network Rail and the Company jointly, of all or any of the powers under this Order for, or relating to, the compulsory acquisition or the taking of temporary possession of any land or rights over land.

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

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

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

together with any rights and obligations (whether or not statutory) of Network Rail or the Company relating to them.

Application of landlord and tenant law

45.—(1) This article applies to—

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

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

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

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

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

Obstruction of construction of authorised works

46. Any person who, without reasonable excuse—

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

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

Trespass

47.—(1) Any person who—

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

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

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

(3) If the railway or any part of it is transferred to Network Rail under article 44(1) (agreements with Network Rail), this article ceases to apply to the railway or to the part of it that has been so transferred.

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

Disclosure of confidential information

48. A person who—

- (a) enters a factory, workshop or workplace in pursuance of the provisions of article 20 (protective works to buildings, roads or apparatus of a statutory undertaker) or article 21 (power to survey and investigate land); and
- (b) discloses to any person any information obtained pursuant to sub-paragraph (a) and relating to any manufacturing process or trade secret,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale unless the disclosure is made in the course of that person’s performance of a duty in connection with the purposes for which the person was authorised to enter the land.

Statutory undertakers etc.

49. The provisions of Schedule 13 (provisions relating to statutory undertakers etc.) have effect.

For the protection of specified undertakers

50. The provisions of Schedule 14 (for the protection of specified undertakers) have effect.

For the protection of the Environment Agency

51. The provisions of Schedule 15 (for the protection of the Environment Agency) have effect.

For the protection of Network Rail

52. The provisions of Schedule 16 (for the protection of Network Rail) have effect.

For the protection of the Canal & River Trust

53. The provisions of Schedule 17 (for the protection of the Canal & River Trust) have effect.

Certification of plans etc.

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

Service of notices

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

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

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

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

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

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

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

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- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
 - (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.
- (9) This article does not exclude the employment of any method of service not expressly provided for by it.

No double recovery

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

Arbitration

57. Any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

Signed by authority of the Secretary of State

Martin Woods
Head of the Transport and Works Act Orders
Unit
Department for Transport

23rd October 2012

SCHEDULES

SCHEDULE 1

Articles 2 and 5

SCHEDULED WORKS

In the County of Oxfordshire, District of Cherwell—

Work No. 1— A double track railway (1,197 metres in length) commencing by a junction with the course of the railway from London Marylebone to Birmingham Moor Street at a point 40 metres west of the northern face of Charbridge Lane overbridge and terminating by a junction with the commencement of Work No.2 on the course of the Bletchley to Oxford Railway at a point 70 metres south-west of Tubbs Lane crossing. Work No.1 includes a culvert extension and the construction of an embankment.

In the County of Oxfordshire, District of Cherwell and the City of Oxford—

Work No. 2— A double track railway (17,600 metres in length) commencing in the county of Oxfordshire, district of Cherwell by a junction with the termination of Work No.1 and terminating in the city of Oxford by a junction with the commencement of Work No.3 at a point 370 metres north of Aristotle Lane Crossing. Work No.2 includes the reconstruction of Bicester Town and Islip Stations; construction of a station at Water Eaton; extensions to bridges OXD37, OXD38, OXD39 and OXD40; remedial works to bridges OXD42, OXD44, OXD46 and OXD49; demolition of bridge OXD47; lowering of track through Wolvercot Tunnel and the provision of a signalling power supply point at the proposed Elm Tree Farm Langford Lane overbridge (Work No.11).

In the City of Oxford—

Work No. 3— A railway (1,939 metres in length) commencing by a junction with the termination of Work No.2 and terminating in Oxford Station at a point 190 metres south of Bridge DCL26. Work No.3 includes the extension of the Aristotle Lane accommodation crossing, remedial works to Bridge OXD53, the extension of DCL26 and the demolition of the parcel bay platforms and construction of platforms and other facilities at Oxford Station.

Work No. 3A— A railway (234 metres in length) forming a spur off Work No.3 commencing by a junction with that work at a point 35 metres north of Bridge DCL26 and terminating in Oxford Station at a point 190 metres south of that bridge.

In the County of Oxfordshire, District of Cherwell—

Work No. 4— A railway (704 metres in length) forming a spur off Work No.2 commencing at a point 276 metres north-east of Bridge OXD38A carrying the A41 road over the railway, and terminating by a junction with Work No.2 at a point 120 metres south-west of Bridge OXD39.

Work No. 4A— A railway (91 metres in length) forming a spur off Work No.4 commencing by a junction with Work No.4 at a point 25 metres south-west of Bridge OXD39 and terminating by a junction with Exchange Sidings at a point 110 metres south-east of that bridge.

Work No. 5— A railway (245 metres in length) forming a spur off Work No.2 commencing by a junction with Exchange Sidings at a point 350 metres north-east of Bridge OXD40 and terminating by a junction with Work No.2 at a point 120 metres north-east of that bridge.

Work No. 6— A railway (527 metres in length) forming a siding commencing at a point 275 metres north-east of Gosford and Water Eaton Number 4 Crossing and terminating by a junction with Work No. 2 at a point 230 metres south-west of that crossing.

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Work No. 7– A railway (200 metres in length) forming a connection between the Bletchley to Oxford Railway and the Oxford to Birmingham Railway commencing by a junction with the termination of Work No.2 at a point on the Bletchley to Oxford Railway 370 metres north of Aristotle Lane Crossing and terminating on the Oxford to Birmingham Railway at a point 185 metres north of that crossing.

Work No. 8– A footbridge (80 metres in length) over Work No.1 commencing on footpath FP129/3 at a point 45 metres south of Bridge NAJ3/27 and terminating on that footpath at a point 82 metres south of that bridge.

Work No. 9– A footbridge (96 metres in length) with stairs and ramps over Work No.1 commencing on footpath FP129/3 at a point 45 metres north-west of Tubbs Lane crossing and terminating on the Path at a point 20 metres south of that crossing.

Work No. 10– A reconstruction of Bridge OXD38A carrying the A41 road over the Bletchley to Oxford Railway commencing at a point 28 metres south-east of that bridge and terminating at a point 20 metres north-west of that bridge. Work No.10 includes the construction of two temporary bridges.

Work No.11– A road (2060 metres in length) including an overbridge over Work No.2 commencing in Langford Lane at a point 115 metres south-west of Akeman Street level crossing and terminating in Wendlebury Road at a point 200 metres north-east of North End, Wendlebury.

Work No. 12– A footbridge (81 metres in length) over Work No.2 commencing on footpath FP398/3 at a point 240 metres north-east of Bridge OXD40C carrying the M40 motorway over Work No.2 and terminating on that footpath at a point 244 metres north-east of that bridge.

Work No.13– An accommodation road and bridleway (735 metres in length) including an overbridge over Work No.2 commencing at Mansmoor Road at a point 340 metres south-east of Holts Farm Crossing and terminating at a point 450 metres south-west of that crossing.

Work No. 14– A road (553 metres in length) including an overbridge over Work No.2 commencing in Oddington Road at a point 330 metres south-east of Oddington Crossing and terminating on that road at a point 210 metres north of that crossing.

Work No. 15– A footbridge (76 metres in length) over Work No.2 commencing on footpath at FP318/5 at a point 23 metres north of Oddington Number 5 Crossing and terminating at a point 25 metres south of that crossing.

Work No. 16– A bridleway (360 metres in length) including an overbridge over Work No.2 commencing at a point 36 metres south-east of Mill Lane crossing on Mill Lane and terminating at a point 315 metres north-west of Mill Lane crossing on Mill Lane.

Work No. 17– A road (610 metres in length) including an overbridge over Work No.2 commencing on bridleway BW229/5 at a point 290 metres north of Water Eaton Number 5 Crossing and terminating on that bridleway at a point 340 metres south-east of that crossing.

Work No. 18– A footbridge (82 metres in length) over Work No.2 commencing on footpath FP229/10 at a point 10 metres east of Gosford and Water Eaton Number 10 Crossing and terminating on that footpath at a point 15 metres west of that crossing.

SCHEDULE 2

Articles 5 and 22

ACQUISITION OF CERTAIN LANDS FOR ANCILLARY WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on deposited plan</i>	<i>(3)</i> <i>Purpose for which land may be acquired</i>
County of Oxfordshire, District of Cherwell	01003, 01004, 01005, 01008, 01009, 03004, 03006, 04032, 04a003, 04a004	Provision of maintenance access
	02001, 02a001, 02a002, 02a003, 02a004, 02a005	Provision of signalling works
	04004, 04006, 04007, 04008, 04009, 04010, 04011, 04012, 04013, 04014, 04015, 04016, 04017, 04018, 04019, 04020, 04021, 04022, 04023, 04024, 04026, 04027, 04028, 04029, 04061	Reconstruction of Bicester Town Station, provision of footbridge and car parking and alterations to road and pedestrian access
	05009, 05010	Environmental mitigation including permanent earth works
	05017, 05018	Embankment strengthening and provision of maintenance access
	07002, 07003, 07004, 07006, 07007, 07008	Provision of vehicular turning areas
	08003	Diversion of overhead electric cables and temporary working site
	08a004, 13012, 13013, 14005, 15034, 16029, 16b001, 22013, 22014	Provision of footpath
	09024, 09025, 15023, 17012, 19005	Environmental mitigation including permanent earth works
	10036, 10a001, 10a002, 10a003, 10a004, 10a009, 10b001, 10b002	Provision of maintenance and accommodation access, and temporary access
	15011, 15012	Provision of accommodation access and working site
	11005, 16a001, 16a002, 16a003, 16a008, 16a009, 17a001	Provision of accommodation access

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on deposited plan</i>	<i>(3)</i> <i>Purpose for which land may be acquired</i>
City of Oxford	12004, 12a003, 12b001, 21b004, 21b005, 21b006, 21b007	Provision of accommodation access and temporary access
	14007, 14009	Provision of footpath and accommodation access
	11008, 11009, 12002, 12003	Provision of accommodation works, access and temporary access
	12c002, 12c003, 12c004, 12c005	Provision of bridleway and accommodation access
	14016	Provision of footpath and accommodation access and temporary working site
	15021, 15024, 15032, 16005	Provision of maintenance access and temporary access
	18009	Provision of disabled parking
	19004	Provision of vehicular turning area and temporary access
	20023, 20024, 21003, 21a001	Provision of accommodation access and temporary access and working site
	23005, 23006, 23007, 23008, 23009, 23010, 23011, 23012, 23013, 23014, 23015, 23a001, 23a002, 23a003, 23a004, 23a005, 23a006, 23a007, 23a008	Construction of a station at Water Eaton, provision of footbridge and car park, road and pedestrian access and access road to rail aggregates terminal
	23016, 23017, 23a009, 23a010	Provision of bus stop and road junction improvements
	23023	Provision of footpath and road improvements
	23024	Provision of footpath and temporary working site
	24002, 24004, 24015, 24017, 24018, 25002	Provision of maintenance access
29003, 29004	Provision of accommodation access and temporary access and working site	

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PART 2

STREETS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Street to be stopped up</i>	<i>Extent of stopping up</i>
County of Oxfordshire	Gavray Drive	Within the Order limits
District of Cherwell	Unclassified road at Water Eaton	Within the Order limits

SCHEDULE 5

Article 10

STREETS TO BE TEMPORARILY STOPPED UP

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Street to be temporarily stopped up</i>	<i>Extent of temporary stopping up</i>
County of Oxfordshire	Charbridge Lane	Within the Order limits
District of Cherwell	Footpath FP129/3	Within the Order limits
	Path	Within the Order limits
	Launton Road	Within the Order limits
	London Road	Within the Order limits
	Station Approach	Within the Order limits
	A41	Within the Order limits
	Langford Lane	Within the Order limits
	Footpath FP398/6	Within the Order limits
	Road to Langford Lane	Within the Order limits
	Wendlebury Road	Within the Order limits
	Footpath FP398/2	Within the Order limits
	Footpath FP398/3	Within the Order limits
	Merton Road	Within the Order limits
	Bridleway BW398/4	Within the Order limits
	Bridleway BW157/4	Within the Order limits
	Oddington Road	Within the Order limits
	Footpath FP318/7	Within the Order limits

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
City of Oxford	Footpath FP318/2	Within the Order limits
	Footpath FP318/5	Within the Order limits
	Footpath FP318/8	Within the Order limits
	Footpath FP318/6	Within the Order limits
	Bletchington Road	Within the Order limits
	Bridleway BW229/5	Within the Order limits
	Footpath FP260/4	Within the Order limits
	Mill Lane	Within the Order limits
	Footpath FP229/4	Within the Order limits
	Oxford Road	Within the Order limits
	Footpath FP229/10	Within the Order limits
	First Turn	Within the Order limits
	Fairlawn End	Within the Order limits
Woodstock Road	Within the Order limits	
Bridleway BW320/10	Within the Order limits	

SCHEDULE 6

Article 11

ACCESS TO WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Description of access</i>
County of Oxfordshire	Charbridge Lane
District of Cherwell	Gavray Drive
	Launton Road
	London Road
	Langford Lane
	Road to Langford Lane
	Wendlebury Road
	Oddington Road
	Mill Lane

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<i>(1)</i>	<i>(2)</i>
<i>Area</i>	<i>Description of access</i>
	Oxford Road (A4165)

SCHEDULE 7

Article 15

REPLACEMENT AND CLOSURE OF ROAD LEVEL CROSSINGS

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
<i>Area</i>	<i>Level crossing to be discontinued</i>	<i>Street to be stopped up</i>	<i>Accommodation works</i>
County of Oxfordshire District of Cherwell	Langford Lane Level Crossing	Langford Lane between points S1 and S2	Work No. 11 (Road)
	Oddington Road Level Crossing	Oddington Road between points S3 and S4	Work No. 14 (Road)
	Islip Road Level Crossing	Mill Lane between points S5 and S6	Work No. 16 (Bridleway)

SCHEDULE 8

Article 16

REPLACEMENT AND CLOSURE OF FOOTPATH LEVEL CROSSINGS

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
<i>Area</i>	<i>Footpath level crossing to be discontinued</i>	<i>Footpath to be stopped up</i>	<i>New footpath to be substituted</i>
County of Oxfordshire District of Cherwell	Tubbs Lane Level Crossing	Footpath FP129/3 between points F3, F4, F5 and F6	Footpath between point F3, Work No. 9 and point F6
	Elm Tree Farm No. 1 Level Crossing	Footpath FP398/6 between points F7 and F8	Footpath between points F7, F9, Work No. 11 and points F10 and F8
	Merton Foot Level Crossing	Footpath FP398/3 between points F10 and F11	Footpath between point F10, Work No. 12 and point F11
	Wendlebury Foot Level Crossing	Footpath FP398/2 between points F12 and F13	Footpath between points F12, F11, Work No. 12 and point F13

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(1) Area	(2) Footpath level crossing to be discontinued	(3) Footpath to be stopped up	(4) New footpath to be substituted
	Beebont Crossing Level	Bridleway BW398/4 and Bridleway BW157/4 between points B1 and B2	Bridleway between points B1, B3, B4, B5, Work No. 13 and point B2
	Oddington Foot Crossing Level	Footpath between points F19 and F20	Footpath between points F19, F21, F22, Work No 14 and point F23
	Yew Tree Farm Crossing Level	Footpath between points F21 and F24	Footpath between points F21, F22, Work No. 14 and point F23
	Islip Foot Crossing Level	Footpath between points F25 and F26	Footpath between points F25 and F27, F28 and F29 and between points F37, F36 and F35
	Oddington No. 5 Crossing. Level	Footpath between points F30 and F31	Footpath between point F30, Work No. 15 and point F31
	Islip No. 4 Crossing Level	Footpath between points F32 and F33 and Footpath FP318/8 between points F33 and F34	Footpath between points F32, F29, F30, Work No. 15, and points F31, F37, F36, F35 and F34
	Water Eaton No. 5 Level Crossing	Bridleway BW229/5 between points B3 and B4	Bridleway between point B3, Work No. 17 and point B4
	Gosford and Eaton No. 4 Water Level Crossing	Footpath between points F38 and F39	Footpath between points F38, F40, the A4165 and points F41 and F39
	Gosford and Eaton No. 10 Water Level Crossing	Footpath between points F42 and F43	Footpath between point F42, Work No. 18 and point F43

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SCHEDULE 9

Article 17

ACCOMMODATION CROSSINGS

PART 1

ACCOMMODATION CROSSINGS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Accommodation facility to be discontinued</i>	<i>(3)</i> <i>Private right of way to be extinguished</i>	<i>(4)</i> <i>Accommodation facility to be substituted</i>
County of Oxfordshire District of Cherwell	Elm Tree Farm No. 1 Crossing	Within the limits of deviation	Work No. 11
	Elm Tree Farm No. 2 Crossing	Within the limits of deviation	Accommodation access and Work No. 11
	College Farm No. 2 Crossing	Within the limits of deviation	Accommodation access from Merton Road
	Manor Farm Crossing	Within the limits of deviation	Accommodation access from Merton Road
	Home Farm Crossing	Within the limits of deviation	Accommodation access from Merton Road
	Beebont Crossing	Within the limits of deviation	Accommodation access and Work No. 13
	Holts Farm Crossing	Within the limits of deviation	Accommodation access and Work No. 13
	Oddington Grange Crossing	Within the limits of deviation	Accommodation access and Work No. 14
	Brookfurlong Farm Crossing	Within the limits of deviation	Accommodation access from Bletchingdon Road
	Northfield Farm Bridge Crossing	Within the limits of deviation	Accommodation access and Work No. 16
Water Eaton No. 5 Crossing	Within the limits of deviation	Work No. 16	

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PART 2
ACCOMMODATION CROSSINGS FOR WHICH
NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Accommodation facility to be discontinued</i>	<i>Private right of way to be extinguished</i>
County of Oxfordshire District of Cherwell	Taylors Number 1 Crossing	Within the limits of deviation
	Wendlebury Crossing	Within the limits of deviation
	Farm Crossing	Within the limits of deviation
	Bonnars Crossing	Within the limits of deviation
	Lane Crossing	Within the limits of deviation
	Footbridge Crossing	Within the limits of deviation
	Islip Foot Crossing	Within the limits of deviation
	Crossing Crossing	Within the limits of deviation
	Mill Farm Crossing	Within the limits of deviation
	Coults Crossing	Within the limits of deviation
	Nesbitts Crossing	Within the limits of deviation
	St Edwards Crossing	Within the limits of deviation

SCHEDULE 10

Article 25

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS
FOR CREATION OF NEW RIGHTS OR IMPOSITION OF RESTRICTIVE COVENANTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land 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, and in the case of the imposition of a restrictive covenant, 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⁽³⁴⁾ has 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—

⁽³⁴⁾ 1973 c. 26.

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- (a) for the words “land is acquired or taken from” there are substituted the words “a right or restrictive covenant over land is purchased from or imposed on”; and
 - (b) for the words “acquired or taken from him” there are substituted the words “over which the right is exercisable or the restrictive covenant enforceable”.
- (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 are substituted the words “a right over or restrictive covenant affecting land consisting”;
 - (b) for the word “severance” there are substituted the words “right or restrictive covenant over or affecting the whole of the house, building or manufactory or of the house and the park or garden”;
 - (c) for the words “part proposed” there are substituted the words “right or restrictive covenant proposed”; and
 - (d) for the words “part is” there are substituted the words “right or restrictive covenant is”.

Application of the 1965 Act

3.—(1) The 1965 Act has 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, or to the imposition under this Order of a restrictive covenant, 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 the restrictive covenant imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable or the restrictive covenant is or is to be enforceable.

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

4. For section 7 of the 1965 Act (measure of compensation in case of severance) there is substituted the following section—

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

5. For section 8 of the 1965 Act (other provisions as to divided land) there is 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, or a restrictive covenant affecting, land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

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- (a) a question of disputed compensation in respect of the purchase of the right or the imposition of the restrictive covenant 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 or the restrictive covenant imposed without material detriment to that land; or
 - (ii) where that land consists of such a park or garden, that the right cannot be purchased or the restrictive covenant imposed without seriously affecting the amenity or convenience of the house to which that land belongs,

the Chiltern Railways (Bicester to Oxford Improvements) Order 2012⁽³⁵⁾ (“the Order”), in relation to that person, ceases to authorise the purchase of the right and is 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 is 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 is to 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),

are modified so 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 or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

7. Section 11 of the 1965 Act (powers of entry) is modified so as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right or restrictive covenant, it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is 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 are modified correspondingly.

8. Section 20 of the 1965 Act (protection for interests of tenants at will, etc.) applies 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

(35) [S.I. 2012/2679](#)

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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 or the enforcement of the restrictive covenant in question.

9. Section 22 of the 1965 Act (interest omitted from purchase) is modified so 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 or to enforce the restrictive covenant imposed, subject to compliance with that section as respects compensation.

SCHEDULE 11

Articles 5, 22 and 29

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on deposited plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Authorised work</i>
County of Oxfordshire	01010	Working site and access	Work No. 1
District of Cherwell	02004, 02008	Working site and access	Work Nos. 1 and 8
	03003	Working site	Work No. 1
	03010, 03011, 03012	Working site, access and footpath diversion	Work No. 9
	03013, 03014, 03017, 03019, 03020, 03021, 03022	Working site and access	Work No. 9
	04003, 04005	Working site	Work No. 2
	04036, 04037, 04038	Access	Work Nos. 2, 4 and 10
	04039, 04041, 04042, 04043, 04044, 04045, 04046, 04047, 04048, 04049, 04050, 04051, 04056, 04057, 04a001, 04a002, 05001, 05005, 05021, 05022	Working site and access	Work Nos. 2, 4 and 10
	05007, 05008, 05015, 05016	Working site and access	Work Nos. 2 and 4

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on deposited plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Authorised work</i>
	05009, 05010	Environmental mitigation including permanent earth works	Work No. 2
	08005, 08009	Access	Work Nos. 2 and 11
	08b004	Working site and accommodation access	Work No. 11
	09001, 09005, 09006, 09008, 09012, 09014, 09017, 09021, 10001, 10009, 10010, 10011, 10015, 12013, 13001, 13006, 13007, 13011, 13018, 13019, 14003, 14010, 15017, 15020, 15028, 15029, 15a001, 16016, 16017, 16018, 16020, 16021, 16022, 16023, 16024, 16025, 16026, 16027, 17002, 17003, 17004, 17006, 17007, 17009, 19006, 19010, 19015, 19016, 20003, 20004, 20005, 20006, 20007, 20008, 20011, 20012, 20015, 20016, 20020, 20022, 21018	Working site and access	Work No. 2
	09024, 15023, 19005	09025, 17012, Environmental mitigation including permanent earth works	Work No. 2
	10016, 10027, 10033, 10034	10021, 10028, Working site and access	Work Nos. 2 and 12

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on deposited plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Authorised work</i>
City of Oxford	10a005, 10a006, 10a007, 10a008	Working site	Work Nos. 2 and 12
	16a004, 16a005, 16a006, 16a007	Working site	Work No. 2
	12005	Working site and access	Work Nos. 2 and 13
	14012, 15013	Working site and access	Work Nos. 2 and 14
	15005	Working site	Work No. 14
	15006, 15007, 15008, 15010	Working site	Work Nos. 2 and 14
	16001, 16010, 16011, 16013	Working site and access	Work Nos. 2 and 15
	18004, 18010	Remedial works to Bridge OXD42 and road junction improvements	Work No. 2
	19008, 21b001	Access	Work No. 2
	24006, 24011	Working site and access	Work Nos. 2 and 18
	25003, 25005	Working site and access	Work No. 2
	26004, 26009, 26010	Remedial works to Bridge OXD49, working site and access	Work No. 2
	29005	Access	Work No. 3
	31006, 31007, 31008, 31009, 31010, 31011, 31012, 31016, 31017, 31018, 31019, 31020, 31021	Working site and access	Work Nos. 3 and 3A
31027, 31028, 31029	Access	Work Nos. 3 and 3A	

SCHEDULE 12

Article 37

TRAFFIC REGULATION

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to traffic regulation</i>	<i>(3)</i> <i>Extent of traffic regulation</i>
County of Oxfordshire	Charbridge Lane	Within the Order limits
District of Cherwell	Launton Road	Within the Order limits
	London Road	Within the Order limits
	Station Approach	Within the Order limits
	Langford Lane	Within the Order limits
	Road to Langford Lane	Within the Order limits
	Wendlebury Road	Within the Order limits
	Oddington Road	Within the Order limits
	Bletchingdon Road	Within the Order limits
	Mill Lane	Within the Order limits
	Oxford Road	Within the Order limits
City of Oxford	First Turn	Within the Order limits
	Fairlawn End	Within the Order limits

SCHEDULE 13

Articles 8, 9, 15, 16, 35 and 49

PROVISIONS RELATING TO STATUTORY UNDERTAKERS ETC.

Apparatus of statutory undertakers etc. on land acquired

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

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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) does 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,

is entitled to recover from the Company compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(5) The provisions of the 1990 Act mentioned in sub-paragraph (1), as applied by that sub-paragraph, do 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⁽³⁶⁾; and

“public utility undertakers” has the same meaning as in the Highways Act 1980⁽³⁷⁾.

Apparatus of statutory undertakers etc. in stopped up streets

2.—(1) Where a street is stopped up under this Order any statutory utility whose apparatus is under, in, upon, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this paragraph, as if this Order had not been made.

(2) Where a street is stopped up under this Order any statutory utility whose apparatus is under, in, upon, over, along or across the street may, and if reasonably requested to do so by the Company must—

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

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

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

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

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

⁽³⁶⁾ 2003 c. 21.

⁽³⁷⁾ 1980 c. 66.

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the Company, or, in default of agreement, is not determined by arbitration to be necessary, 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) is to 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 is not to 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 is to 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)) must, 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) do 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 are to 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 are to be borne by the Company and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this paragraph—

- “apparatus” has the same meaning as in Part 3 of the 1991 Act;
- “relocation works” means work executed, or apparatus provided, under sub-paragraph (2); and
- “statutory utility” means a statutory undertaker for the purposes of the Highways Act 1980 or a public communications provider as defined in paragraph 1(6).

Railway and navigation undertakings

3.—(1) Subject to the following provisions of this paragraph, the powers under article 8 (power to execute street works) to break up or open a street are not exercisable where the street, not being a highway maintainable at public expense (within the meaning of the Highways Act 1980)—

- (a) is under the control or management of, or is maintainable by, railway or tramway undertakers or a navigation authority; or
- (b) forms part of a level crossing belonging to any such undertakers or to such an authority or to any other person,

except with the consent of the undertakers or authority or, as the case may be, of the person to whom the level crossing belongs.

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

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(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 must not be unreasonably withheld.

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

SCHEDULE 14

Article 50

FOR THE PROTECTION OF SPECIFIED UNDERTAKERS

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

(2) The provisions of Schedule 13 (provisions relating to statutory undertakers etc.), in so far as they relate to the removal of apparatus, do 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⁽³⁸⁾) 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;
- (c) in the case of a water undertaker—
 - (i) mains, pipes or other apparatus belonging to, or maintained by, the undertaker for the purposes of water supply; and
 - (ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991⁽³⁹⁾;
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the undertaker under the Water Industry Act 1991; and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 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

⁽³⁸⁾ 1989 c. 29.

⁽³⁹⁾ 1991 c. 56.

“undertaker” means—

- (e) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (f) a gas transporter within the meaning of Part 1 of the Gas Act 1986⁽⁴⁰⁾;
- (g) a water undertaker within the meaning of the Water Industry Act 1991; and
- (h) 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 the Company and the undertaker are regulated by the provisions of Part 3 of the 1991 Act.

4.—(1) Where any street is stopped up under article 9 (stopping up of streets), any undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up, but nothing in this paragraph affects any right of the Company or of the undertaker to require the removal of that apparatus under paragraph 6(2) or the power of the Company to carry out works under paragraph 8.

(2) the Company must give not less than 28 days’ notice in writing of its intention to stop up any street under article 9 to any undertaker whose apparatus is in that street.

5. Regardless of any provision in this Order or anything shown on the deposited plans the Company must not acquire any apparatus other than by agreement.

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

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the Company requires the removal of any apparatus placed in that land, it must 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) the Company must, subject to sub-paragraph (3), afford to the undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the Company and for the subsequent maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the Company, or the Company 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 must, on receipt of a written notice to that effect from the Company, 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 the Company under this Schedule must be constructed in such manner and in such line or situation as may be agreed between the undertaker in question and the Company or in default of agreement settled by arbitration in accordance with article 57 (arbitration).

(5) The undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 57, and after the grant to the

⁽⁴⁰⁾ 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).

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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 the Company to be removed under the provisions of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the Company gives notice in writing to the undertaker in question that it desires itself to execute any work to which this sub-paragraph applies, that work, instead of being executed by the undertaker, must be executed by the Company without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the undertaker.

(7) Sub-paragraph (6) applies to any part of any work necessary in connection with construction of alternative apparatus, or the removal of apparatus required to be removed, as will take place in any land of the Company.

(8) Nothing in sub-paragraph (6) authorises the Company 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.

7.—(1) Where, in accordance with the provisions of this Schedule, the Company affords to an undertaker facilities and rights for the construction and maintenance in land of the Company of alternative apparatus in substitution for apparatus to be removed, those facilities and rights may be granted upon such terms and conditions as may be agreed between the Company and the undertaker in question or in default of agreement settled by arbitration in accordance with article 57 (arbitration).

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

- (a) give effect to all reasonable requirements of the Company for ensuring the safety and efficient operation of the railway and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the Company 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 the Company 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 must make such provision for the payment of compensation by the Company to that undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

8.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 6(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the Company under paragraph 6(2), the Company must submit to the undertaker in question a plan, section and description of the works to be executed.

(2) Those works are to 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 an officer of the undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by the undertaker under sub-paragraph (2) must 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 the Company, reasonably requires the removal of any apparatus and gives written notice to the Company of that requirement, paragraphs 6 and 7 apply as if the removal of the apparatus had been required by the Company under paragraph 6(2).

(5) Nothing in this paragraph precludes the Company 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 apply to and in respect of the new plan, section and description.

(6) The Company is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must 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 must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

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

(2) Subject to the following provisions of this paragraph, the Company must 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 6(2).

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

(4) 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 those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the Company or, in default of agreement, is not determined by arbitration in accordance with article 57 (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 (2), is to 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 must not be treated as 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 must 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 an undertaker in respect of works by virtue of sub-paragraph (2) must, 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

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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.

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 6(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of an undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any undertaker, the Company must—

- (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.

10.—(2) Nothing in sub-paragraph (1) imposes any liability on the Company 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 must give the Company reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the Company, which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

SCHEDULE 15

Article 51

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

1.—(1) For the protection of the Agency, the following provisions have effect unless otherwise agreed in writing between the Company 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” are to 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.

2.—(1) Before beginning to construct any specified work, the Company must 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 must 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) must not be unreasonably withheld or delayed;
- (b) is 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.

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

3. Without limitation on the scope of paragraph 2, the requirements which the Agency may make under that paragraph include conditions requiring the Company 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, must be constructed—

- (a) without unreasonable 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 an officer of the Agency is entitled to watch and inspect the construction of such works.

(2) The Company must 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 the Company at the Company's own expense to comply with the requirements of this Schedule or (if the Company so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) 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 the Company, 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

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works specified in the notice and any expenditure incurred by it in so doing is recoverable from the Company.

(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 must 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, the Company must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation or on land held by the Company 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 the Company is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the Company to repair and restore the work, or any part of such work, or (if the Company so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), 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 the Company, the Company 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 the Company.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must 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 must be made good by the Company to the reasonable satisfaction of the Agency and if the Company fails to do so, the Agency may make good the same and recover from the Company the expense reasonably incurred by it in so doing.

7.—(1) The Company must 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 the Company 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,

the Company fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and may recover from the Company 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 the Company the reasonable cost of so doing provided that notice specifying those steps is served on the Company 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) authorises the Agency to execute works on or affecting an operational railway without the prior consent in writing of the Company, such consent not to be unreasonably withheld or delayed.

9. The Company must 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; and
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Schedule.

10.—(1) Without prejudice to the other provisions of this Schedule, the Company must 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 the Company, its contractors, agents or employees whilst engaged upon the work.

(2) The Agency must give to the Company reasonable notice of any such claim or demand and no settlement or compromise may be made without the agreement of the Company which agreement must not be unreasonably withheld or delayed.

11. The fact that any work or thing has been executed or done by the Company 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, does not relieve the Company 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⁽⁴¹⁾ (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 is 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 the Company and the Agency under this Schedule, if the parties agree, is to be determined by arbitration under article 57 (arbitration), but otherwise is to be determined by the Secretary of State for Environment, Food and Rural Affairs and the Secretary of

(41) 1991 c. 57.

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State for Transport acting jointly on a reference to them by the Company or the Agency, after notice in writing by one to the other.

SCHEDULE 16

Article 52

FOR THE PROTECTION OF NETWORK RAIL

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

2. In this Schedule—

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

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

“network licence” means the network licence, as amended from time to time, granted to Network Rail by the Secretary of State in exercise of powers under section 8 of the Railways Act 1993⁽⁴²⁾

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

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

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

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held by or used for the benefit of Network Rail for the purposes of such railway or works, apparatus or equipment; and

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

3.—(1) Where under this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval must not be unreasonably withheld or delayed but may be subject to reasonable conditions (while recognising that the engineer has sole discretion in matters relating to safety) and is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

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

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

(42) 1993 c. 43.

4.—(1) The Company must not exercise the powers conferred by article 21 (power to survey and investigate land, etc.) or the powers conferred by section 11(3) of the 1965 Act as applied by this Order in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

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

(3) The Company must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, as applied by Schedule 13 (provisions relating to statutory undertakers, etc.), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

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

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

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

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

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes are to be constructed by Network Rail but at the expense of the Company, or if Network Rail so desires such protective works must be carried out by the Company at its own expense without unnecessary delay, and the Company must not commence the construction of the specified works until the engineer has notified the Company that the protective works have been completed to the engineer's reasonable satisfaction.

6.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) must, when commenced, be constructed without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 5—

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- (a) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (b) in such manner as to cause as little damage as is possible to railway property; and
- (c) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic on it and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of, a specified work, the Company must, regardless of any approval described in paragraph 6(1), make good such damage and pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Schedule imposes—

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

7. The Company must—

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

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

9.—(1) If any permanent or temporary alterations or additions to railway property, or any protective works under paragraph 5(4), are reasonably necessary during the construction of a specified work, or during a period of 12 months after the opening for public use of any authorised work that includes a specified work, in consequence of the construction of that specified work, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the Company reasonable notice of its intention to carry out such alterations or additions, the Company must pay to Network Rail all costs reasonably and properly incurred in constructing those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

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

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

10. The Company must repay to Network Rail all fees, costs, charges and expenses reasonably and properly incurred by Network Rail—

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

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

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

13.—(1) The Company must pay to Network Rail all costs, charges, damages and expenses not otherwise provided for in this Schedule (but subject to article 56 (no double recovery)) which may be occasioned to or reasonably and properly incurred by Network Rail—

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

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

(2) Network Rail must give the Company reasonable notice of any such claim or demand and must make no settlement or compromise of such a claim or demand without the prior consent of the Company.

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

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

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

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail’s railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

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

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

15. In the assessment of any sums payable to Network Rail under this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the Company under this Schedule or increasing the sums so payable.

16. The Company must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 54 (certification of plans etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

SCHEDULE 17

Article 53

FOR THE PROTECTION OF THE CANAL & RIVER TRUST

1.—(1) For the protection of the Canal & River Trust, the following provisions, have effect unless otherwise agreed in writing between the Company and the Trust.

(2) In this Schedule—

“the canal” means any canal or waterway owned or managed by the Trust, and includes any works connected with any such canal or waterway for the maintenance of which the Trust is responsible and any lands held or used by the Trust for the purposes of the canal;

“canal work” means so much of any specified work or any other work of which the Company is in possession under the powers conferred by this Order as is in or over the canal;

“construction” includes execution, placing, altering, replacing and relaying and includes removal;

“detriment” means any damage to the canal or any other property of the Trust and, without limitation on the scope of the meaning, includes—

- (a) the erosion of the bed or banks of the canal, or the impairment of the stability of any works, lands or premises forming part of the canal;
- (b) the silting of the canal or the deposit of materials in it so as to materially damage the canal;
- (c) the pollution of the canal;
- (d) any material alteration of the water level of the canal, or material interference with the supply of water to the canal, or drainage of water from the canal; and
- (e) any material harm to the ecology of the canal (including any material adverse impact on any site of special scientific interest comprised in the canal);

“non-canal work” means so much of any specified work or any other work of which the Company is in possession under the powers conferred by this Order as is not in or over the canal;

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

“specified work” means so much of any permanent or temporary work authorised by this Order as is in, across, under, or within 15 metres of, or may in any way affect, the canal but does not include painting;

“stoppage season” means a period of 5 calendar months running consecutively from 1 November until 31 March inclusive; and

“the Trust” means the Canal & River Trust.

2. The Company must not under the powers conferred by article 22 (power to acquire land) acquire compulsorily any land of the Trust without the consent of the Trust.

3.—(1) Subject to sub-paragraph (2), the Company must not under the powers conferred by article 22 (power to acquire land) acquire compulsorily any easement or other right over any land of the Trust other than such easements or other rights over any such land, as are reasonably necessary for, or in connection with, the construction, maintenance or operation of the authorised works.

(2) The Company must not acquire any such easement or other right that would impede navigation (such that minimum clear headroom is reduced to below 3 metres above water level or the navigable width of the canal is reduced below that existing on the date on which this Order is made) at any point along the length of the canal.

4. Before beginning to construct any specified work, the Company must submit to the Trust plans of the work and such further particulars available to it as the Trust may within 14 days of the submission of the plans reasonably require.

5. Any specified work must not be constructed except in accordance with such plans as may be approved in writing by the Trust or determined under article 57 (arbitration).

6. Any approval of the Trust required under paragraph 5 must not be unreasonably withheld and—

- (a) is deemed to have been given if it is neither given nor refused (with an indication of the grounds for refusal) within 28 days of the submission of the plans for approval or where further particulars are submitted under paragraph 4, within 28 days of the submission of those particulars; and

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- (b) may be given subject to such reasonable requirements as the Trust may make for the purpose of ensuring the safety or stability of the canal, including requirements as to the construction of protective works.

7. Any specified work, and any protective works required by the Trust under paragraph 6(b), must be constructed without unnecessary delay to the reasonable satisfaction of the Trust, and in such manner as to cause as little damage to the canal as may be reasonably practicable and as little interference as may be reasonably practicable with the passage of vessels using the canal, and an officer of the Trust is entitled at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect the construction of such work or works.

8. The Company must give to the Trust not less than 56 days' notice in writing of its intention to commence construction of any specified work or any protective works and also, except in emergency (when the Company must give such notice as may be reasonably practicable), of its intention to carry out any works for the repair or maintenance of any specified work in so far as such works of repair or maintenance affect or interfere with the canal.

9. The Company must not—

- (a) temporarily close the canal; or
- (b) temporarily obstruct navigation along the canal;

other than during the stoppage season and must give to the Trust notice in writing of its intention to close temporarily or obstruct temporarily the canal by 1 May immediately prior to the relevant stoppage season.

10. The Company must not exercise the maintenance powers conferred by articles 5 (power to construct and maintain works) and 30 (temporary use of land for maintenance of works) in relation to the canal unless such exercise is with the consent of the Trust.

11. The Company must bear the reasonable costs of the carrying out, by a qualified surveyor or engineer (“the surveyor”) to be appointed by the Trust and Company, of surveys of so much of the canal as will or may be affected by the specified works—

- (a) before commencement of the initial construction of any part of the specified works; and
- (b) following completion of the specified works,

and if the Trust and the Company do not agree on the appointment of the surveyor under this paragraph an arbitrator is 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.

12. For the purposes of the surveys the Company—

- (a) on being given reasonable notice (save in the case of emergency, when immediate access must be afforded) must afford reasonable access to the site of the specified works and to any land and existing works of the Company which may provide support for the canal as will or may be affected by the specified works; and
- (b) as soon as reasonably practicable must supply the surveyor with all such information as the surveyor may reasonably require with regard to such land and existing works of the Company and to the specified works or the method of construction of the specified works.

13. The surveyor must provide copies of a report of the surveys to both the Trust and the Company without unnecessary delay.

14. Where, in the reasonable opinion of the Trust, the surveys show that the specified works are likely to cause detriment to the canal then, at the request of the Trust and at its own expense, the Company must take steps to remedy such detriment to the reasonable satisfaction of the Trust.

15. The Company must not deposit any polluting material on, in or over the canal and must not without the consent of the Trust—

- (a) deposit any other materials on, in or over the canal (other than materials comprised in a specified work); or
- (b) regardless of anything in article 19 (discharge of water), discharge any water directly or indirectly into the canal.

16. Any consent of the Trust required under paragraph 15 must not be unreasonably withheld and—

- (a) is deemed to have been given if it is neither given nor refused within 28 days of the submission of the request for it; and
- (b) may be given subject to such reasonable requirements as the Trust may make—
 - (i) in the case of a deposit, so as to ensure that the use of the canal is not obstructed or rendered less safe, and
 - (ii) in the case of a discharge, concerning the reimbursement by the Company of expenses incurred by the Trust in disposing of the water so discharged, being expenses which the Trust would not have incurred but for the discharge.

17. In its application to the discharge of water into the canal, article 19(6) (discharge of water) has effect subject to the terms of any requirements attached to the consent under paragraph 16 and, where such discharge includes a deposit to which consent has been given under paragraph 15, to any requirements attached to that consent.

18. If any canal work is abandoned, the Trust may by notice in writing require the Company to take such reasonable steps as may be specified in the notice to remove the work and (to such extent as the Trust reasonably requires) to restore the site to its former condition.

19. If any canal work is in such condition that it is, or is likely to become, a danger to or to interfere with navigation, the Trust may by notice in writing require the Company to take such reasonable steps as may be specified in the notice—

- (a) to repair and restore the work or part of it; or
- (b) if the Company so elects, to remove the work and (to such extent as the Trust reasonably requires) to restore the site to its former condition.

20. If—

- (a) a work which consists of a canal work and a non-canal work is abandoned or falls into decay; and
- (b) the non-canal work is in such a condition as to interfere with the right of navigation in the relevant canal or as to interfere with the rights of access or use of land adjacent to the relevant canal;

the Trust may include the non-canal work, or any part of it, in any notice under paragraph 19.

21. If after such reasonable period as may be specified in a notice under paragraph 19 the Company has failed to begin taking steps to comply with the requirements of the notice or after beginning has failed to make reasonably expeditious progress towards their implementation, the Trust may carry out the works specified in the notice and any expenditure reasonably incurred by it in so doing is recoverable from the Company.

22. The Company must indemnify the Trust from all claims, demands, proceedings or damages, which may be made or given against, or recovered from the Trust by reason of any damage to the canal which is caused by the construction of any specified work or protective work or any act or

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omission of the Company, its contractors, agents or employees whilst engaged upon the work and from any costs reasonably incurred in making good such damage.

23. The Trust must give to the Company reasonable notice of any such claim or demand and no settlement or compromise of any such claim or demand is to be made without the consent of the Company which, if it notifies the Trust that it desires to do so, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

24. Nothing in paragraph 22 imposes any liability on the Company with respect to any damage to the extent that it is attributable to the act, neglect or default of the Trust, its officers, servants, contractors or agents but the fact that any work or thing has been executed or done in accordance with a plan approved or deemed to be approved by the Trust, or to its satisfaction, or in accordance with a determination in accordance with the article 57 (arbitration), does not (in the absence of negligence on the part of the Trust, its officers, servants, contractors or agents) relieve the Company from any liability under the provisions of this Schedule.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises The Chiltern Railway Company Limited to construct a new railway (including the reconstruction of existing railway) and associated works between Bicester and Oxford together with the construction or reconstruction of stations at Bicester Town, Islip, Water Eaton and Oxford in order to facilitate the operation of direct railway services between London Marylebone, High Wycombe, Bicester Town and Oxford. The Order authorises the acquisition and use of land for the purposes of the works and confers powers in connection with the construction and operation of the railway.

Copies of the deposited plans and deposited sections are available for inspection at the registered office of The Chiltern Railway Company Limited, Great Central House, Marylebone Station, Melcombe Place, London NW1 6JJ.