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STATUTORY INSTRUMENTS

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**2012 No. 2679**

**The Chiltern Railways (Bicester to  
Oxford Improvements) Order 2012**

**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<sup>(1)</sup>; 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;

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(1) 1989 c. 29.

- (c) maintain apparatus in the street or change its position; and
  - (d) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b) and (c).
- (2) This article is subject to paragraph 3 of Schedule 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<sup>(2)</sup> (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<sup>(3)</sup> 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<sup>(4)</sup> as incorporated in the Oxford and Bletchley Junction Railway Act 1846<sup>(5)</sup>, the Buckinghamshire Railways Act 1850<sup>(6)</sup> or any other enactment or instrument, all public or private rights of way (if any) across the railway by means

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(2) 1980 c. 66.  
(3) S.I. 2012/2679 ].  
(4) 1845 c. 20.  
(5) 1846 c. lxxxii.  
(6) 1850 c. vi.

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.

(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(7).

(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<sup>(8)</sup>.

(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—

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<sup>(8)</sup> [S.I. 2010/675](#).

- (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(9).
- (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.