
STATUTORY INSTRUMENTS

2013 No. 533

TRANSPORT AND WORKS, ENGLAND
TRANSPORT, ENGLAND

The Network Rail (Seaham Level Crossing) Order 2013

Made - - - - *7th March 2013*

Coming into force - - - *28th March 2013*

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The Secretary of State, having considered the objections made and not withdrawn has determined to make an Order giving effect to the proposals comprised in the application with modifications which in the opinion of the Secretary of State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 5th March 2013.

The Secretary of State, in exercise of the powers conferred by sections 1 and 5 of, and paragraphs 3 to 5, 7, 8, 11 and 16 of Schedule 1 to, the 1992 Act makes the following Order:—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Network Rail (Seaham Level Crossing) Order 2013 and comes into force on 28th March 2013.

Interpretation

2.—(1) In this Order—

“the 1863 Act” means the Londonderry Railway (Seaham to Sunderland) Act 1863⁽³⁾;

⁽¹⁾ S.I. 2006/1466.

⁽²⁾ 1992 c. 42. Relevant amending instruments are S.I. 1995/1541, S.I. 1998/2226, S.I. 2000/3199 and S.I. 2006/958.

⁽³⁾ 1863 c. lxvi.

- “the 1961 Act” means the Land Compensation Act 1961(4);
- “the 1965 Act” means the Compulsory Purchase Act 1965(5);
- “the 1990 Act” means the Town and Country Planning Act 1990(6);
- “the 1991 Act” means the New Roads and Street Works Act 1991(7);
- “address” includes any number or address used for the purposes of electronic transmission;
- “authorised works” means the works authorised by section 16 (works to be executed) of the Railways Clauses Consolidation Act 1845(8) as applied by section 2 of the 1863 Act for the provision of a crossing of the railway in place of the Seaham level crossing;
- “the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;
- “building” includes any structure or erection or any part of a building, structure or erection;
- “the deposited plan” means the plan certified by the Secretary of State as the deposited plan 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;
- “highway authority” has the same meaning as in the Highways Act 1980(9);
- “the new footway” means a new footway to be provided in the existing highway between point G on the deposited plan and the south-east-bound platform of Seaham Station;
- “the new public right of way” means the new cycle track (as referred to in article 4(2) (creation and maintenance of new public right of way and new footway)) to be provided between points C, D, E, F and G on the deposited plan and includes the adjoining embankments and surrounding fence;
- “Network Rail” means Network Rail Infrastructure Limited (company No. 02904587) whose registered office is at Kings Place, 90 York Way, London N1 9AG;
- “owner”, in relation to land, has the same meaning as in the Acquisition of Land Act 1981(10);
- “the Seaham level crossing” means so much of Station Road, Seaham as is shown between points A and B on the deposited plan;
- “the tribunal” means the Upper Tribunal (Lands Chamber);
- “the undertaking” means the railway undertaking of Network Rail as existing from time to time.

(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 airspace over its surface.

(4) 1961 c. 33.
(5) 1965 c. 56.
(6) 1990 c. 8.
(7) 1991 c. 22.
(8) 1845 c. 20.
(9) 1980 c. 66.
(10) 1981 c. 67.

PART 2

PROVISION OF CROSSING

Closure of level crossing

3.—(1) Subject to paragraph (3) the Seaham level crossing is stopped-up and discontinued.

(2) Subject to paragraph (3), upon the stopping up and discontinuance of the Seaham level crossing—

- (a) any right of way over the crossing is extinguished; and
- (b) section 15 of the 1863 Act ceases to apply in relation to the location of the crossing.

(3) Paragraphs (1) and (2) are not to have effect until the new public right of way and the new footway have been constructed and completed to the reasonable satisfaction of the highway authority in accordance with article 4 (creation and maintenance of new public right of way and new footway) and are open to use.

(4) 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.

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

Creation and maintenance of new public right of way and new footway

4.—(1) The new public right of way and the new footway are to be completed to the reasonable satisfaction of the highway authority and are to be maintained by and at the expense of Network Rail for a period of 12 months from their completion and after the expiry of that period by and at the expense of the highway authority.

(2) On completion of the new public right of way in accordance with paragraph (1) it is to be a cycle track within the meaning of section 329 of the Highways Act 1980⁽¹¹⁾ over which the public have a right of way on foot.

(3) In any action against Network Rail in respect of loss or damage resulting from any failure by it to maintain the new public right of way or the new footway, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that Network Rail had taken such care as in all the circumstances was reasonably required to secure that the part of the new public right of way or the new footway to which the action relates was not dangerous to traffic.

(4) For the purposes of a defence under paragraph (3), the court must in particular have regard to the following matters—

- (a) the character of the new public right of way or the new footway and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a public right of way or the new footway of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the new public right of way or the new footway;
- (d) whether Network Rail knew, or could reasonably have been expected to know, that the condition of the part of the new public right of way or the new footway to which the

(11) 1980 c. 66.

action relates was likely to cause danger to users of the new public right of way or the new footway;

- (e) where Network Rail could not reasonably have been expected to repair that part of the new public right of way or the new footway 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 Network Rail had arranged for a competent person to carry out or supervise the maintenance of the part of the new public right of way or the new footway to which the action relates unless it is also proved that Network Rail had given the competent person proper instructions with regard to the maintenance of the new public right of way or the new footway and that the competent person had carried out those instructions.

(5) The new public right of way and the new footway are to be treated as completed to the satisfaction of the highway authority for the purpose of paragraph (1) if it fails to reply to a request for certification that it is satisfied with the work within 28 days of receiving the request.

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

5. Network Rail may acquire compulsorily so much of the land shown numbered 2, 5 and 7 on the deposited plan and described in the book of reference as may be required for the purpose of the authorised works.

Application of Part 1 of the 1965 Act

6.—(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 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

7.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(12) 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—

(12) 1981 c. 66.

- (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 5 (power to acquire land).

Temporary possession or use of land

Temporary use of land for construction of works

- 8.—**(1) Network Rail may, in connection with the carrying out of the authorised works, enter upon and take temporary possession of the land shown numbered 3, 4, 6 and 8 on the deposited plan for the purpose of creating a working site in connection with the construction of the authorised works.
- (2) Not less than 14 days before entering upon and taking temporary possession of land under this article Network Rail must serve notice of the intended entry on the owners and occupiers of the land.
- (3) Network Rail may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the authorised works.
- (4) Before giving up possession of land of which temporary possession has been taken under this article, Network Rail must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but Network Rail is not required to replace a building removed in connection with the carrying out of the authorised works.
- (5) Network Rail 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 17 (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) Where Network Rail takes possession of land under this article, it is not required to acquire the land or any interest in it.

(9) 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 6(1) (application of Part 1 of the 1965 Act).

Compensation

Disregard of certain interests and improvements

9.—(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

10.—(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 or airspace), 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) The 1961 Act has effect, subject to paragraph (1), as if this Order were a local enactment for the purposes of that Act.

Supplementary

Acquisition of part of certain properties

11.—(1) This article applies instead of section 8(1) of the 1965 Act (as applied by article 6 (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 so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and
- (b) a copy of this article is served on the owner with the notice to treat.

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

(3) If no such counter-notice is served within that period, the owner 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 Network Rail 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 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 the land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the 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 Network Rail is authorised to acquire compulsorily under this Order.

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

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
- (b) 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 Network Rail is authorised to acquire compulsorily under this Order.

(9) In any case where by virtue of a determination by the tribunal under this article a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, Network Rail may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, if it does so, 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, Network Rail 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

12.—(1) Subject to paragraph (5), all private rights of way over land subject to compulsory acquisition under this Order and any other private rights over that land which are inconsistent with the purposes of the authorised works are extinguished—

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

(b) on the date of entry on the land by Network Rail under section 11(1) of the 1965 Act, whichever is the sooner.

(2) Subject to paragraph (5), all private rights of way over land of which Network Rail takes temporary possession under this Order and any other private rights over that land which are inconsistent with the purposes of the authorised works are suspended and unenforceable for as long as Network Rail remains in lawful possession of the land.

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

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

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

(a) any notice given by Network Rail before the completion of the acquisition of the land, Network Rail's entry onto it or Network Rail's taking temporary possession of it that either or both of those paragraphs do not apply to any right specified in the notice; and

(b) any agreement which makes reference to this article 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) between Network Rail and the person in or to whom the right in question is vested or belongs.

(6) If any such agreement as is mentioned in sub-paragraph (5)(b) is expressed to have effect also for the benefit of those deriving title from or under the person in or to whom the right in question is vested or belongs, it 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

13.—(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 6 (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⁽¹³⁾ as applied by article 7 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The powers conferred by article 8 (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 Network Rail from 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.

(13) 1981 c. 66.

PART 4

MISCELLANEOUS AND GENERAL

Statutory undertakers, etc.

14. The provisions of the Schedule (provisions relating to statutory undertakers, etc.) have effect.

Certification of plan, etc.

15. Network Rail must, as soon as practicable after the making of this Order, submit copies of the book of reference and the deposited plan to the Secretary of State for certification that they are true copies of, respectively, the book of reference and deposited plan 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

16.—(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⁽¹⁴⁾ (references to service by post) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, 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.

(14) 1978 c. 30.

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

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

- (a) that person 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

17. 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

18. 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

7th March 2013

SCHEDULE

Articles 12 and 14

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 by Network Rail under this Order subject to the following provisions of this Schedule: 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 Network Rail compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(4) Sub-paragraph (3) 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 Network Rail compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer 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⁽¹⁵⁾; and

“public utility undertakers” has the same meaning as in the Highways Act 1980⁽¹⁶⁾.

Apparatus and rights of statutory undertakers etc. in stopped up streets

2.—(1) On the stopping up of the Seaham level crossing under article 3 (closure of level crossing) any statutory utility whose apparatus is under, in, upon, along or across the level crossing 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.

⁽¹⁵⁾ 2003 c. 21.

⁽¹⁶⁾ 1980 c. 66.

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(2) On the stopping up of the Seaham level crossing under article 3 any statutory utility whose apparatus is under, in, upon, over, along or across the level crossing may, and if reasonably requested to do so by Network Rail 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, Network Rail 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 Seaham level crossing; and
- (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

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

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

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

(8) In this paragraph—

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

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“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).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order confers powers on Network Rail to stop up the Seaham level crossing, and for the compulsory acquisition of land and the temporary use of land in connection with the provision of a right of way to replace the crossing.

The Order does not authorise the construction of works.

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