
STATUTORY INSTRUMENTS

2005 No. 3105

**The Docklands Light Railway
(Capacity Enhancement) Order 2005**

**PART I
PRELIMINARY**

Citation and commencement

1. This Order may be cited as the Docklands Light Railway (Capacity Enhancement) Order 2005 and shall come into force on 25th November 2005.

Interpretation

2.—(1) In this Order—

- “the 1845 Act” means the Railways Clauses Consolidation Act 1845**(1)**;
- “the 1961 Act” means the Land Compensation Act 1961**(2)**;
- “the 1965 Act” means the Compulsory Purchase Act 1965**(3)**;
- “the 1980 Act” means the Highways Act 1980**(4)**;
- “the 1981 Act” means the Acquisition of Land Act 1981**(5)**;
- “the 1984 Act” means the Road Traffic Regulation Act 1984**(6)**;
- “the 1990 Act” means the Town and Country Planning Act 1990**(7)**;
- “the 1991 Act” means the New Roads and Street Works Act 1991**(8)**;
- “the 1992 Act” means the Transport and Works Act 1992**(9)**;
- “the 1993 Act” means the Railways Act 1993**(10)**;
- “the 1994 Act” means the London Docklands Development Corporation Act 1994**(11)**;
- “the 2003 Act” means the Communications Act 2003**(12)**;
- “the Applications Rules” means the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2000**(13)**;

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- (1)** 1845 c. 20.
 - (2)** 1961 c. 33.
 - (3)** 1965 c. 56.
 - (4)** 1980 c. 66.
 - (5)** 1981 c. 67.
 - (6)** 1984 c. 27.
 - (7)** 1990 c. 8.
 - (8)** 1991 c. 22.
 - (9)** 1992 c. 42.
 - (10)** 1993 c. 43.
 - (11)** 1994 c. 13.
 - (12)** 2003 c. 21.
 - (13)** S.I.2000/2190.

“authorised works” means the scheduled works and any other works authorised by this Order or any part of them;

“the Board” means the British Waterways Board;

“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;

“bridge strengthening” means works to construct or maintain all necessary embankments, aprons, abutments, retaining walls and wing walls for the purposes of strengthening bridges;

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

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

“the deposited plans” means the composite plans certified by the Secretary of State as the deposited plans for the purposes of this Order and references to land shown on those plans are references to land so shown in pursuance of rule 12(5) of the Applications Rules;

“the deposited sections” means the sections certified by the Secretary of State as the deposited sections for the purposes of this Order;

“DLRL” means Docklands Light Railway Limited, a company limited by shares and registered in England and Wales under number 2052677;

“the Docks” means West India North Branch Dock, West India Centre Branch Dock, West India South Dock and Millwall Inner Dock shown on the maps referred to in section 3 of the 1994 Act;

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

“the electronic communications code” has the same meaning as in Chapter 1 of Part II of the 2003 Act;

“electronic communications code network” means—

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

“former PTO” means a person—

- (a) who is a provider of a public electronic communications network or a public electronic communications service which, immediately before the date on which the repeal by the 2003 Act of section 7 of the Telecommunications Act 1984(14) comes into force, was designated as a public telecommunication system under section 9 of that Act; and
- (b) who, immediately before that date, was authorised to provide that network or service by a licence to which section 8 of that Act applied.

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

“the limits of deviation” means the limits of lateral deviation for the scheduled works mentioned in article 6(1)(a);

“the limits of land to be acquired or used” means the limit so shown and described on the deposited plans;

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace and “maintenance” shall be construed accordingly;

“mooring” means any buoy, pile, pontoon chain or other apparatus used for the mooring of vessels;

“Network Rail” means Network Rail Infrastructure Limited;

“occupier” means a person occupying land under a tenancy for a period of more than one month (not being a statutory tenant within the meaning of the Rent Act 1977⁽¹⁵⁾ or the Rent Agriculture Act 1976)⁽¹⁶⁾;

“operator”, in relation to an electronic communications code network means—

- (a) the electronic communications code operator providing that network; or
- (b) the Secretary of State or a Northern Ireland department, to the extent that they are providing or proposing to provide that network;

“the Order limits” means the limits of deviation and the limits of additional land to be acquired or used shown on the deposited plans;

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

“parking place” has the same meaning as in section 32 of the 1984 Act;

“pile strengthening” means works to construct, alter or otherwise strengthen piers and columns to support DLRL’s railway viaduct;

“provide” and cognate expressions, in relation to an electronic communications network, an electronic communications service or associated facilities, are to be construed in accordance with section 32(4) of the 2003 Act;

“public electronic communications network” and “public electronic communications service” each has the same meaning as in Chapter 1 of Part II of the 2003 Act;

“the scheduled works” means the works specified in Schedule 1 to this Order or any part of them;

“station works” means the works specified in column (3) of Part 2 of Schedule 2 to this Order to be undertaken in relation to the stations specified in column (1) of Part 2 of Schedule 2;

“street” includes part of a street;

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

“the tribunal” means the Lands Tribunal; and

“viaduct strengthening” means pile strengthening, works to attach steel plates to DLRL’s railway viaduct and such other works to strengthen DLRL’s railway viaduct as DLRL thinks fit.

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

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

(4) References in this Order to points identified by letters, with or without numbers, shall be construed as references to the points so marked on the deposited plans.

(5) All distances, directions and lengths stated in the description of the scheduled works or in any description of powers or lands shall be construed as if the words “or thereabouts” were inserted

(15) 1977 c. 42. See section 2(1) and Schedule 1, as amended by the Housing Act 1980 (c. 51), sections 76 and 153(2) and Schedule 26, and the Housing Act 1988 (c. 50), section 39(1).

(16) 1976 c. 80. See section 4, as amended by the Rent Act 1977, section 155 and Schedule 23, and the Housing Act 1980, section 76(3).

after each such distance, direction and length, and distances between points on a scheduled work shall be taken to be measured along the scheduled work.

Application of 1991 Act

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

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

(2) Section 56 (directions as to timing) and section 58 (restrictions following substantial road works) of the 1991 Act shall not apply in relation to any works executed under the power of this Order.

(3) The provisions of the 1991 Act mentioned in paragraph (4) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved under, those provisions shall apply (with the necessary modifications) in relation to the stopping up, alteration or diversion of a street by DLRL under the powers conferred by this Order whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

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

- section 54 (advance notice of certain works);
- section 55 (notice of starting date of works);
- section 57 (notice of emergency works);
- section 59 (general duty of street authority to co-ordinate works);
- section 60 (general duty of undertakers to co-operate);
- section 68 (facilities to be afforded to street authority);
- section 69 (works likely to affect other apparatus in the street);
- section 75 (inspection fees);
- section 76 (liability for cost of temporary traffic regulation);
- 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.

(5) Nothing in this Order shall prejudice the operation of section 87 of the 1991 Act (prospectively maintainable highways); and DLRL shall not by reason of any duty under this Order to maintain a street be taken to be the street authority in relation to that street for the purposes of Part III of that Act.

Incorporation of the Railways Clauses Consolidation Act 1845

4.—(1) The following provisions of the 1845 Act shall be incorporated in this Order—

- section 68 and section 69 (accommodation works by company);
- section 71 (additional accommodation works by owners);
- sections 72 and 73 (supplementary provisions relating to accommodation works);
- sections 87 and 88 (contracts with other companies);

section 97 (default in payment of tolls);
sections 103 and 104 (refusal to quit carriage at destination);
section 105 (carriage of dangerous goods on railway);
section 144 (defacing of boards);
section 145 (recovery of penalties);
section 154 (transient offenders).

(2) In those provisions as incorporated in this Order—

“the company” means DLRL;

“goods” includes anything conveyed on the railways authorised to be constructed by this Order;

“lease” includes an agreement for lease;

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

“the railway” means any railway authorised to be constructed by this Order and, except where the context otherwise requires, 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 under this Order.

(3) In section 69 of the 1845 Act, as incorporated in this order, for the words “determined by two justices” to the end there shall be substituted the words “referred to arbitration”.

(4) In section 71 of the 1845 Act, as incorporated in this Order, the words “or directed by such justices to be made by the company” shall be omitted, and for the words “authorised by two justices” there shall be substituted the words “determined by arbitration”.

(5) Any difference arising under section 72 of the 1845 Act, as incorporated in this Order, shall be referred to arbitration.

PART 2

WORKS PROVISIONS

Principal Powers

Power to construct and maintain works

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

(2) Subject to article 6, the scheduled works shall be constructed in the lines or situations shown on the deposited plans and in accordance with the levels shown on the deposited sections.

(3) DLRL may carry out and maintain—

(a) on the land specified in columns (1) and (2) of Part 2 of Schedule 2 to this Order, the works specified in relation to that land in column (3) of that Part of that Schedule;

(b) at each of the stations specified in column (1) of Part 2 of Schedule 2 to this Order and on the land specified in relation to that station in column (2) of that part of that Schedule, the station works;

together with all necessary works and facilities in connection therewith.

(4) Subject to paragraph (6), and without prejudice to any other powers available to it under any other enactment, DLRL may from time to time carry out and maintain such of the following works as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the authorised works, namely—

- (a) works to alter the position of apparatus, including mains, sewers, drains, pipes, cables and street furniture;
- (b) works to erect and construct such stations, engines, machinery, apparatus, and other works and facilities as DLRL thinks fit;
- (c) making, providing, extending and maintaining all such, approaches, bridges, subways, interchanges, roundabouts, turning places, passages, areas of access and staging as DLRL thinks fit;
- (d) making junctions and communications (including the provision of steps or ramps for the use of persons on foot) with any highway or access way interfered with by, or contiguous with, any of those works, and widening or altering any highway or access way for the purposes of connecting it with any of those works or another highway, or of crossing under or over the highway or access way;
- (e) works to carry out viaduct strengthening, pile strengthening and bridge strengthening;
- (f) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
- (g) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised works;
- (h) works for the benefit or protection of land or premises affected by the authorised works, and
- (i) works to alter, repair or discontinue the above mentioned works or any of them and substitute others in their place.

(5) Subject to paragraph (6), DLRL may from time to time 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 authorised works.

(6) The works specified in paragraphs (4) and (5) may only be carried out—

- (a) within the limits of deviation for the scheduled works shown on the deposited plans;
- (b) on land specified in columns (1) and (2) of Parts 1 or 2 of Schedule 2 to this Order in connection with authorised works specified in relation to that land in column (3) of that part of that Schedule; and
- (c) on land specified in columns (1) and (2) of Schedule 8 to this Order in connection with the authorised works specified in relation to that land in column (4) of that Schedule.

(7) The following enactments shall not apply to anything done under or in pursuance of this Order—

- (a) section 109 of the Water Resources Act 1991(17);
- (b) section 23 of the Land Drainage Act 1991(18);
- (c) section 13 of the 1994 Act; and
- (d) any byelaws made under the above Acts.

(17) 1991 c. 57.

(18) 1991 c. 59.

Power to deviate

- 6.—(1) In constructing or maintaining any of the scheduled works, DLRL may—
- (a) deviate laterally from the lines or situations shown on the deposited plans within the limits of deviation relating to that work shown on those plans;
 - (b) deviate vertically from the levels shown on the deposited sections—
 - (i) to any extent not exceeding 1.5 metres upwards in the case of Works Nos. 9 and 10;
 - (ii) to any extent not exceeding 1 metre upwards in the case of any other of the scheduled works; and
 - (iii) to any extent downwards.
- (2) Without prejudice to the generality of paragraph (1), in constructing or maintaining the scheduled works DLRL may, to the extent that it thinks fit—
- (a) deviate from their points of commencement and termination shown on the deposited plans; and
 - (b) in relation to any intended bridge, viaduct, gantry or other structure or apparatus above ground level, deviate from the design shown on the deposited sections as it thinks fit, including by varying the number of any supporting piers, columns or other structures, the distances between them and the height or clearance above the level of the ground.

Station works at Tower Gateway

- 7.—(1) DLRL may, in the construction of Work No. 1 and within the limits of deviation for that work—
- (a) alter and extend Tower Gateway station with all necessary works and conveniences connected therewith, including the construction of new platform extensions and canopy over DLRL's platforms at that station; and
 - (b) provide at the station new pedestrian access incorporating a lift and staircase.

Station works at Poplar

8. DLRL may, in the construction of Works Nos. 3 and 4, and within the limits of deviation for those works alter and extend Poplar station with all necessary works and conveniences connected therewith, including the construction of new platform extensions and a canopy over DLRL's platforms at that station.

Station works at Mudchute

9. DLRL may, in the construction of Works Nos. 7 and 8 and within the limits of deviation for those works alter and extend Mudchute station with all necessary works and conveniences connected therewith, including the construction of new platform extensions and a canopy over DLRL's platforms at that station.

Streets

Power to keep apparatus in streets

10.—(1) DLRL 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

prejudice to the generality of the foregoing, 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 III of the 1991 Act;
- (b) “electric line” has the meaning given by section 64(1) of the Electricity Act 1989⁽¹⁹⁾; 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

11.—(1) DLRL may, for the purposes of the authorised works, enter upon so much of any of the streets specified in Schedule 3 to this Order 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).

(2) In this article “apparatus” has the same meaning as in Part III of the 1991 Act and includes a sewer, drain or tunnel and any structure for the lodging within that structure of apparatus or any structure required for gaining access to apparatus.

Stopping up of streets

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

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

- (a) the new street to be substituted for it, and which is specified in relation to it by reference to one of the scheduled works mentioned 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 is first provided and thereafter maintained by DLRL to the reasonable satisfaction of the street authority between the commencement and termination points of the street to be stopped up until completion of the new street in accordance with sub-paragraph (a).

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

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

- (a) DLRL is in possession of the land; or

⁽¹⁹⁾ 1989 c. 29.

- (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) DLRL may for the purposes of, in connection with or in consequence of the authorised works in the London borough of Tower Hamlets, install columns in any part of—
- (a) Branch Road which lies between points N1, N2, N3 and N4;
 - (b) Westferry Road which lies between points N5, N6 and N7 and between points N8 and N9;
 - (c) Aspen Way which lies between points P1, P2, P3 and P4;
- and stop up those streets to the extent occupied by those works.
- (6) Where a street has been stopped up under this article—
- (a) all rights of way over or along it shall be extinguished; and
 - (b) DLRL may appropriate and use for the purposes of its undertaking so much of the site of the street as is bounded on both sides by land owned by DLRL.
- (7) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part I of the 1961 Act.
- (8) This article is subject to paragraph 1 of Schedule 9 to this Order.

Temporary stopping up of streets

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

- (a) divert the traffic from the street, and
 - (b) subject to paragraph (3), prevent all persons from passing along the street.
- (2) Without prejudice to the generality of paragraph (1), DLRL may use South Quay Station Plaza and any street stopped up under the powers of this article as a temporary working site.
- (3) DLRL shall provide at all times reasonable access for pedestrians going to or from premises abutting a street affected by the exercise of the powers conferred by this article if there would otherwise be no such access.
- (4) Without prejudice to the generality of paragraph (1), DLRL may exercise the powers of this article in relation to the streets specified in columns (1) and (2) of Schedule 5 to this Order.
- (5) DLRL shall not exercise the powers of 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, but such consent shall not be unreasonably withheld.
- (6) In this article “South Quay Station Plaza” means the lands delineated on the deposited plans and shown numbered 532, 537, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576 and 577 in the London borough of Tower Hamlets.

Access to works

14. DLRL may, for the purposes of the authorised works—

- (a) form and lay out such means of access or improve such existing means of access, in the locations specified in columns (1) and (2) of Schedule 6 to this Order at or about the point marked “A”; 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 DLRL reasonably requires for the purposes of the authorised works.

Construction and maintenance of new or altered streets

15.—(1) Subject to paragraph (4), any street to be constructed under this Order shall be completed to the reasonable satisfaction of the highway authority and shall, unless otherwise agreed, be maintained by and at the expense of DLRL 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) Subject to paragraph (4), where a street is altered or diverted under this Order, the altered or diverted part of the street shall when completed to the reasonable satisfaction of the street authority, unless otherwise agreed, be maintained by and at the expense of DLRL 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) Nothing in this Order shall have effect in relation to street works as respects which the provisions of Part III of the 1991 Act apply.

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

Agreements with street authorities

16.—(1) A street authority and DLRL may enter into agreements with respect to—

- (a) the construction of any new street (including any structure carrying the street over or under the authorised 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 any street or of the structure of any bridge or tunnel carrying a street over or under an authorised 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 11.

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

- (a) provide for the street authority to carry out any function under this Order which relates to the street in question; and
- (b) contain such terms as to payment and otherwise as the parties consider appropriate.

(3) In this article—

- (a) “an authorised railway” means the Tower Gateway to Westferry Railway, the Poplar to Stratford and Beckton Railway and the Canary Wharf to Lewisham Railway; and
- (b) “the Tower Gateway to Westferry Railway”, “the Poplar to Stratford and Beckton Railway” and “the Canary Wharf to Lewisham Railway” have the same meanings as in Schedule 1 to this Order.

Construction of bridges

17. Any bridge to be constructed or reconstructed under this Order for carrying a highway over or under a railway shall be constructed or reconstructed in accordance with plans and specifications approved by the relevant highway authority, but such approval shall not be unreasonably withheld.

Works in the Docks

18.—(1) Without prejudice to the other powers conferred by this Order or otherwise available to it, DLRL may within the designated area, for the purposes of or in connection with the construction, operation or maintenance of the authorised works and notwithstanding any interference thereby with any public or private rights—

- (a) construct, place, alter, relocate or replace any work or structure whether temporary or permanent;
- (b) close and de-water any part of the designated area and divert vessels and other craft from any part of the designated area;
- (c) use, appropriate and dispose of any materials obtained by it in carrying out any such operations;
- (d) remove or relocate any mooring;
- (e) remove and relocate any vessel or structure sunk, stranded or abandoned or moored or left (whether lawfully or not);
- (f) temporarily moor or anchor vessels and structures and load and unload into and from such vessels or structures equipment, machinery, soil and any other materials in connection with the authorised works; and
- (g) temporarily interfere with, occupy and use the bed, waters and dock walls within the designated area;

in such manner and to such extent as may appear to DLRL to be necessary or convenient.

(2) Except in the case of emergency, DLRL will use its reasonable endeavours to notify the owner of any mooring and the owner or master of any vessel or structure affected by the proposal to exercise the powers of paragraph (1)(d) or (e) before the exercise of that power.

(3) During any period of closure in accordance with paragraph (1)(b), all rights of navigation along, and obligations of the Board to maintain for navigation any waters within the designated area or part thereof so closed shall be suspended and unenforceable against the Board.

(4) In this article—

“designated area” means that part of the Docks within the Order limits.

Supplemental

Discharge of water

19.—(1) DLRL 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, sewer or drain.

(2) Any dispute arising from the exercise of the powers in paragraph (1) to connect to or use a public sewer or drain shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991(20).x

(20) 1991 c. 56.

(3) DLRL shall not discharge any water into any watercourse, public sewer or drain except with the consent of the authority to which it belongs; and such consent may be given subject to such terms and conditions as the authority may reasonably impose but shall not be unreasonably withheld.

(4) DLRL shall not make any opening into any public sewer or drain except in accordance with plans approved by, and under the superintendence (if provided) of, the authority to which the sewer or drain belongs, but such approval shall not be unreasonably withheld.

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

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

(7) The article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991(21).

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board, a local authority, or a harbour authority within the meaning of the Harbours Act 1964(22);
- (b) “watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows, except a public sewer or drain; and
- (c) other expressions used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

Protective works to buildings

20.—(1) Subject to the following provisions of this article, DLRL may at its own expense and from time to time carry out such protective works to any building lying within the Order limits as DLRL considers to be necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the construction, in the vicinity of the building, of any part of the authorised works; or
- (b) after the completion of the construction of that part of the authorised works, 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 DLRL may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building DLRL may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land.

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;

(21) 1991 c. 57.

(22) 1964 c. 40.

- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land;

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

(6) Where notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 54.

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

(8) Where—

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

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

(9) Without prejudice to article 53, nothing in this article shall relieve DLRL from any liability to pay compensation under section 10(2) of the 1965 Act.

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

(11) In this article—

- (a) “building” includes any structure or erection or any part of a building, structure or erection; and
- (b) “protective works”, in relation to a building, means—
 - (i) underpinning, strengthening and any other external or internal works the purpose of which is to prevent damage which may be caused to the building by the construction, maintenance or operation of the authorised works;
 - (ii) any external or internal works the purpose of which is to remedy any damage which has been caused to the building by the construction, maintenance or operation of the authorised works; and
 - (iii) any external or internal 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.

Town and country planning

21.—(1) In relation to the application of paragraph (3)(c) of the Second Schedule of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Tree Preservation Order) Regulations 1969⁽²³⁾ (including that paragraph as applied by regulation 3(ii) of the Town and Country Planning (Tree Preservation Order) (Amendment) and (Trees in Conservation Areas) (Exempted Cases) Regulations 1975⁽²⁴⁾, or as incorporated in any tree preservation order), any

⁽²³⁾ S.I. 1969/17.

⁽²⁴⁾ S.I. 1975/148.

direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to works authorised by this Order shall be treated as deeming the permission to have been granted on application made under Part III of that Act for the purposes of that Part.

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

(3) Planning permission which is deemed by a direction under section 90(2A) of the 1990 Act to be granted in relation to works authorised by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of that Act (cases in which land is to be treated as operational land for the purposes of that Act).

Power to survey and investigate land, etc.

22.—(1) DLRL may for the purposes of this Order—

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

- (a) shall, if so required, before or after entering the land produce written evidence of his authority to do so; and
- (b) may take with him such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes shall be made under this article in a carriageway or footway without the consent of the street authority, but such consent shall not be unreasonably withheld.

(5) DLRL shall make compensation for any damage occasioned, by the exercise of the powers conferred by this article, to the owners and occupiers of the land, such compensation to be determined, in case of dispute, under Part I of the 1961 Act.

Obstruction of construction of authorised works

23. Any person who, without reasonable excuse, obstructs another person from constructing any of the authorised works under the powers conferred by this Order shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

24.—(1) DLRL may acquire compulsorily—

- (a) so much of the land shown on the deposited plans within the limits of deviation for the scheduled works shown on those plans and described in the book of reference as may be required for or in connection with the authorised works; and
- (b) so much of the land specified in columns (1) and (2) of Parts 1 and 2 of Schedule 2 to this Order (being land shown on the deposited plans and described in the book of reference as lying within the limits of additional land to be acquired or used) 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 ancillary to its undertaking.

(2) This article is subject to article 29(2).

Application of Part I of the Compulsory Purchase Act 1965

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

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

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

Application of Compulsory Purchase (Vesting Declarations) Act 1981

26.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981⁽²⁶⁾ shall apply to DLRL as if this Order were a compulsory purchase order.

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

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

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

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

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

(26) 1981 c. 66.

(5) In that section, subsections (5) and (6) shall be omitted and at the end there shall be substituted—

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

- (a) he is for the time being entitled to dispose of the fee simple of the land, whether in possession or reversion; or
- (b) he holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month”.

(6) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after “publication” there shall be inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) shall be omitted.

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

(8) References to the 1965 Act shall be construed as references to that Act as applied to the acquisition of land under article 25.

Powers to acquire new rights

27.—(1) DLRL may compulsorily acquire such easements or other rights over any land referred to in paragraph (1)(a) or (b) of article 24 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) Schedule 7 to this Order shall have effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right.

(3) Subject to section 8 of the 1965 Act (as modified by paragraph 5 of Schedule 7 to this Order), where DLRL acquires a right over land under paragraph (1) it shall not be required to acquire a greater interest in that land.

Powers to acquire subsoil only

28.—(1) DLRL may compulsorily acquire so much of the subsoil of the land referred to in paragraph (1)(a) or (b) of article 24 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 DLRL acquires any part of the subsoil of land under paragraph (1) DLRL shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) shall not prevent article 33 from applying where DLRL acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Rights under or over streets

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

(2) The power under paragraph (1) may be exercised in relation to a street without DLRL being required to acquire any part of the street or any easement or right in the street and except in relation to a street which is subject to stopping up pursuant to article 12, the powers of compulsory acquisition of land conferred by this Order shall not apply in relation to the street.

(3) 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 DLRL acquiring any part of that person's interest in the land, and who suffers loss by the exercise of that power, shall be entitled to compensation to be determined, in case of dispute, under Part I of the 1961 Act.

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

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

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

Temporary possession of land

Temporary use of land for construction of works

30.—(1) DLRL may, in connection with the carrying out of the authorised works—

- (a) enter upon and take temporary possession of the land specified in columns (1) and (2) of Schedule 8 to this Order for the purpose specified in relation to that land in column (3) of that Schedule in connection with the authorised works (or any of those works) so specified in column (4) of that Schedule;
- (b) remove any buildings and vegetation from that land; and
- (c) construct temporary works (including the provision of means of access) and buildings on the land.

(2) Not less than 14 days before exercising the powers of paragraphs (1) or (2), DLRL shall serve notice of the intended entry or use on the owners and occupiers of the land.

(3) DLRL 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 2 years beginning with the date of completion of the work or works specified in relation to that land in column (4) of Schedule 8 to this Order.

(4) Before giving up possession of land of which temporary possession has been taken under paragraph (1), DLRL shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but DLRL shall not be required to replace a building removed under this article.

(5) DLRL shall pay compensation to the owners and occupiers of land of which temporary possession is taken under paragraph (1), for any loss or damage arising from the exercise in relation to the land of the powers conferred by paragraph (1).

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, shall be determined under Part I of the 1961 Act.

(7) Without prejudice to article 53, nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5).

(8) Where DLRL takes possession of or uses any land under this article, it shall not be required to acquire the land or any interest in it.

(9) In this article and article 31 “building” includes structure or any other erection.

(10) Section 13 of the 1965 Act shall apply to the temporary use of land authorised under this article to the same extent as it applies to the acquisition of land authorised under this Order by virtue of article 24(1).

Temporary use of land for maintenance of works

31.—(1) Subject to paragraph (2) at any time during the maintenance period relating to any of the scheduled works, DLRL may—

- (a) enter upon and take temporary possession of any land within the Order limits and lying within 20 metres from any authorised work, if such possession is reasonably required for the purpose of, or in connection with, maintaining that work or any ancillary works connected with it or securing the safe operation of any such work; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) shall not authorise DLRL 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 DLRL shall serve notice of the intended entry on the owners and occupiers of the land.

(4) DLRL may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance works for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, DLRL shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) DLRL shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, shall be determined under Part I of the 1961 Act.

(8) Without prejudice to article 53, nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where DLRL takes possession of land under this article, it shall not be required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act shall apply to the temporary use of land authorised under this article to the same extent as it applies to the acquisition of land authorised under this Order by virtue of article 24(1).

(11) In this article—

- (a) “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 public use; and
- (b) any reference to land within a specified distance of a work includes, in the case of a work under the surface of the ground, a reference to land within the specified distance of the point on the surface below which the work is situated.

Compensation

Disregard of certain interests and improvements

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

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

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

(2) In paragraph (1) “relevant land” means the land acquired from the person concerned or any other land with which he is, or was at the time when the building was erected, the works executed or the improvement or alteration made, directly or indirectly concerned.

Supplementary

Acquisition of part of certain properties

33.—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 25) 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 factory 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 DLRL a counter-notice objecting to the sale of the land subject to the notice to treat and stating that he is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner shall be required to sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner shall be required to sell only the land subject to the notice to treat shall, unless DLRL agrees to take the land subject to the counter-notice, be referred to the tribunal.

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

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

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

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

- (a) without material detriment to the remainder of the land subject to the counter-notice; or

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

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

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

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

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

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

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

the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which DLRL 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, DLRL may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, if it does so, shall pay to the owner compensation for any loss or expense occasioned to him 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 factory or of land consisting of a house with a park or garden, DLRL shall pay him compensation for any loss sustained by him due to the severance of that part in addition to the value of the interest acquired.

Extinction or suspension of private rights of way

34.—(1) Subject to the provisions of this article, all private rights of way over land held or used by DLRL for the purposes of the authorised works or subject to compulsory acquisition under this Order shall be extinguished—

- (a) as from the use by DLRL of the land for the purposes of the authorised works;
- (b) as from the acquisition of the land by DLRL, whether compulsorily or by agreement; or
- (c) on the entry on the land by DLRL under section 11(1) of the 1965 Act,

whichever is sooner.

(2) Subject to the provisions of this article, all private rights of way over land owned by DLRL which is within the Order limits and is required for the purposes of this Order, shall be extinguished on the appropriation of the land for any of those purposes by DLRL.

(3) Subject to the provisions of this article, all private rights of way over land of which DLRL takes temporary possession under this Order shall be suspended and unenforceable for as long as DLRL remains in lawful possession of the land.

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

(5) This article does not apply in relation to any right of way to which section 271 or 272 of the 1990 Act (extinguishment of rights of statutory undertakers, etc.) or paragraph 2 of Schedule 9 to this Order applies.

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

(a) any notice given by DLRL before the completion of the acquisition of the land, DLRL's appropriation of it, DLRL's entry onto it or DLRL's taking temporary possession of it, as the case may be, that any or all of those paragraphs shall not apply to any right of way specified in the notice; and

(b) any agreement made (whether before or after any of the events mentioned in paragraph (6)(a) and before or after the coming into force of this Order) between DLRL and the person in or to whom the right of way in question is vested or belongs.

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

Public open space at Deptford Bridge

35.—(1) As from the date upon which DLRL enters onto the special category land under section 11(1) of the 1965 Act the special category land shall thereupon be discharged from all rights, trusts and incidents to which it was previously subject.

(2) In this article—

“the special category land” means the land delineated on the deposited plans and thereon numbered 783, 784, 787 and 793 in the London Borough of Lewisham and forming part of an open space within the meaning of section 19(1) of the 1981 Act which the Secretary of State has certified as not exceeding 209 square metres and that the giving in exchange of other land for the special category land is unnecessary for the purposes of section 19(1) of the 1981 Act.

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 shall be served under Part I of the 1965 Act, as applied to the acquisition of land by article 25; and

(b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981, as applied by article 26.

(2) The power conferred by article 30 to enter upon and take temporary possession of land shall cease at the end of the period mentioned in paragraph (1); but this paragraph shall not prevent DLRL from remaining in possession of land in accordance with article 30 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

OPERATION OF AUTHORISED WORKS

Maintenance of approved works, etc.

37.—(1) Where pursuant to regulations⁽²⁷⁾ made under section 41 of the 1992 Act (approval of works, plant and equipment) approval has been obtained from the Health and Safety Executive with respect to any works, plant or equipment (including vehicles) forming part of the authorised works, such works, plant and equipment shall not be used in a state or condition other than that in which they were at the time that the approval was given unless any change thereto does not materially impair the safe operation of the authorised works.

(2) If without reasonable cause the provisions of paragraph (1) are contravened, DLRL shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) No proceedings shall be instituted in England and Wales in respect of an offence under this article except by or with the consent of the Health and Safety Executive or the Director of Public Prosecutions.

Power to lop trees overhanging authorised works

38.—(1) DLRL 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 for the purposes of the authorised works; or
- (b) from constituting a danger to passengers or other persons using the authorised works.

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

(3) Nothing in this article shall be taken to affect the application of any tree preservation order made under section 198 of the 1990 Act.

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

PART 5

PROTECTIVE PROVISIONS

Statutory undertakers, etc.

39. The provisions of Schedule 9 to this Order shall have effect.

For protection of Network Rail Infrastructure Limited

40. The provisions of Schedule 10 to this Order shall have effect.

(27) See S.I. 1994/157.

For protection of local highway authorities

41. The provisions of Schedule 11 to this Order shall have effect.

For protection of the Environment Agency

42. The provisions of Schedule 12 to this Order shall have effect.

For protection of specified undertakers

43. The provisions of Schedule 13 to this Order shall have effect.

For protection of British Waterways Board

44. The provisions of Schedule 14 to this Order shall have effect.

PART 6

MISCELLANEOUS AND GENERAL

Traffic regulation

45.—(1) Subject to the provisions of this article DLRL may during and for the purposes of the authorised works from the commencement of this Order 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) revoke any traffic regulation order in so far as it is inconsistent with any prohibition or restriction made by DLRL under this paragraph.

(2) DLRL shall not exercise the powers of this article unless it has—

- (a) given not less than 12 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 seven 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.

(3) Any prohibition or restriction made by DLRL under paragraph (1) above shall 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.

(4) In this article—

“the relevant streets” means the carriageway of the streets specified in columns (1) and (2) of Schedule 15 to this Order; and

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or an electronic communications code operator or a former PTO as defined in article 2(1).

Powers of disposal, agreements for operation, etc.

46.—(1) DLRL may, with the consent of the Secretary of State sell, lease, charge or otherwise dispose of, on such terms and conditions as it thinks fit, the whole or any part of the designated works and any land held in connection therewith.

(2) Without prejudice to the generality of paragraph (1), DLRL may enter into and carry into effect agreements with respect to any of the following matters, namely, the construction, maintenance, use and operation of the designated works, or any part or parts of them, by any other person, and other matters incidental or subsidiary thereto or consequential thereon, and the defraying of, or the making of contributions towards, the cost of the matters aforesaid by DLRL or any other person.

(3) Any agreement under paragraph (2) may provide, among other things, for the exercise of the powers of DLRL in respect of the works or any part or parts thereof, and for the transfer to any person of the works or any part or parts thereof together with the rights and obligations of DLRL in relation thereto.

(4) The exercise of the powers of any enactment by any person in pursuance of any sale, lease, charge or disposal under paragraph (1), or any agreement under paragraph (2), shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those powers were exercised by DLRL.

(5) Sections 163 and 207(2) of the Greater London Authority Act 1999⁽²⁸⁾ shall not apply to the disposal of any freehold interest in land or the grant of a leasehold interest in land where consent for such disposal or grant is required under paragraph (1).

(6) In this article—

“designated works” means any of the authorised works which are to be constructed on any lands which were subject to a transfer scheme made pursuant to section 3 of the London Docklands Railway (Lewisham) (No. 2) Act 1993⁽²⁹⁾.

Application of landlord and tenant law

47.—(1) This article applies to any agreement for leasing to any person the whole or any part of the authorised works or the right to operate the same, and any agreement entered into by DLRL 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 shall prejudice the operation of any agreement to which this article applies.

(3) Accordingly no such enactment or rule of law shall apply 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.

Defence to proceedings in respect of statutory nuisance

48.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990⁽³⁰⁾ (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so

⁽²⁸⁾ 1999 c. 29.

⁽²⁹⁾ 1993 c. viii.

⁽³⁰⁾ 1990 c. 43.

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

- (a) that the nuisance relates to premises used by DLRL for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works and that the nuisance is attributable to the carrying out of works which are being carried 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⁽³¹⁾; or
 - (b) that the nuisance is a consequence of the operation of the works authorised by this Order and that it cannot reasonably be avoided.
- (2) The following provisions of the Control of Pollution Act 1974, namely—
- (a) section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990); and
 - (b) section 65(8) (corresponding provision in relation to consent for registered noise level to be exceeded);

shall not apply where the consent relates to the use of premises by DLRL 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 1993 Act (statutory authority as a defence to actions in nuisance, etc.) or any rule of common law having similar effect.

Disclosure of confidential information

49. A person who—

- (a) enters a factory, workshop or workplace in pursuance of the provisions of article 20 or article 22; and
- (b) discloses to any person any information obtained by him relating to any manufacturing process or trade secret;

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale unless the disclosure is made in the course of performing his duty in connection with the purposes for which he was authorised to enter the land.

Application of certain railway enactments

50.—(1) Any enactment by which any railway or former railway of Network Rail comprised within the affected properties was authorised shall have effect subject to the provisions of this Order.

- (2) Nothing in paragraph (1) shall prejudice any express statutory provision for —
- (a) the protection of the owner, lessee or occupier of any specifically designated property; or
 - (b) the protection or benefit of any public trustees or commissioners, corporation or other person, specifically named in such provision.

(3) In this article “affected properties” means any land described in the book of reference which is owned by Network Rail or in which Network Rail has an interest.

Certification of plans, etc.

51. DLRL shall, 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

(31) 1974 c. 40.

that they are true copies of, respectively, the book of reference, the deposited plans and the deposited sections referred to in this Order; and a document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

52.—(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) subject to paragraphs (5), (6), (7) and (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⁽³²⁾ as it applies for the purposes of this article, the proper address of any person in relation to the service on him of a notice or document under paragraph (1) is, if he 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, his last known address at the time of service.

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

- (a) addressing it to him 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 shall be taken to be fulfilled where the recipient of the notice or other document to be transmitted has given his 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 he requires a paper copy of all or any part of that notice or other document the sender shall provide such a copy as soon as reasonably practicable.

(7) A person may revoke his consent to the use of electronic transmission 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 he shall—

- (a) give notice in writing or by electronic transmission revoking any consent given by him for that purpose; and
- (b) such revocation shall be final and shall take effect on a date specified by the person in the notice but that date shall not be less than 7 days after the date on which the notice is given.

(9) This article shall not be taken to exclude the employment of any method of service not expressly provided for by it.

(32) 1978 c. 30.

No double recovery

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

Arbitration

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

Signed by authority of the Secretary of State

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

4th November 2005