

2009 No. 2728

TRANSPORT AND WORKS, ENGLAND

TRANSPORT ENGLAND

The Network Rail (Reading) (Land Acquisition) Order 2009

Made - - - - - *7th October 2009*

Coming into force - - - - - *28th October 2009*

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

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

The Secretary of State, having considered the objections made and not withdrawn and the report of the person who held the inquiry, has determined to make an Order giving effect to the proposals comprised in the application with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

Notice of the Secretary of State’s determination was published in the London Gazette on 29th September 2009.

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

^(a) S.I. 2006/1466.

^(b) 1992 c. 42.

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Network Rail (Reading) (Land Acquisition) Order 2009 and shall come into force on 28th October 2009.

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(a);

“the 1965 Act” means the Compulsory Purchase Act 1965(b);

“the 1990 Act” means the Town and Country Planning Act 1990(c);

“the 1991 Act” means the New Roads and Street Works Act 1991(d);

“address” includes any number or address used for the purposes of electronic transmission;

“authorised works” means the works or any part of the works for the alteration and improvement of Reading Station and the railway and railway facilities to the east and west of the station comprising, in relation to each of the land parcels listed in column 1 of the table in Schedule 1 (authorised works), the works described in column 2 of that table authorised by the statutes specified in column 3 of that table;

“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;

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

“the land plans” means the plans certified by the Secretary of State as the land plans for the purposes of this Order;

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

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace, and

“maintenance” shall be construed accordingly;

“Network Rail” means Network Rail Infrastructure Limited;

“owner”, in relation to land, has the same meaning as in the Acquisition of Land Act 1981(e);

“the tribunal” means the Upper Tribunal;

“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 air-space over its surface.

(a) 1961 c. 33.
(b) 1965 c. 56.
(c) 1990 c. 8.
(d) 1991 c. 22.
(e) 1981 c. 67.

PART 2
ACQUISITION AND POSSESSION OF LAND
Powers of acquisition

Power to acquire land

3.—(1) Network Rail may acquire compulsorily so much of the land shown on the land plans within the limits of land to be acquired or used and described in the book of reference as may be required for or in connection with the authorised works, and it may use any land so acquired for those purposes or for any other purposes ancillary to the undertaking.

(2) This article is subject to article 7 (new rights only to be acquired in certain lands) and paragraph (8) of article 10 (temporary use of land for construction of works) and does not apply to any land specified in Schedule 5 (land over which temporary rights of access may be exercised).

Application of Part 1 of the Compulsory Purchase Act 1965

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

- (a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981 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), 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 the Compulsory Purchase (Vesting Declarations) Act 1981

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

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

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

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

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

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

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

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

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

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

(a) 1981 c. 66.

- (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 3 (power to acquire land).

Power to acquire new rights

6.—(1) Network Rail may acquire compulsorily such easements or other rights over any land which it is authorised to acquire under article 3 (power to acquire land) as may be required for any purpose for which that land may be acquired under that provision, by creating them as well as by acquiring easements or other rights already in existence.

(2) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 2 (modification of compensation and compulsory purchase enactments for creation of new rights)), where Network Rail acquires a right over land under paragraph (1), it shall not be required to acquire a greater interest in that land.

(3) Schedule 2 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.

New rights only to be acquired in certain lands

7. In the case of the land specified in Schedule 3 (land in which only new rights may be acquired), Network Rail’s powers of compulsory acquisition under article 3(1) (power to acquire land) shall be limited to the acquisition of such easements and other new rights in the land in accordance with article 6(1) (power to acquire new rights) as it may require for the purposes of constructing, maintaining, protecting, renewing and using the authorised works.

Power to acquire subsoil or airspace only

8.—(1) Network Rail may acquire compulsorily so much of, or such rights in, the subsoil of, or the airspace over, the land which it is authorised to acquire under article 3 (power to acquire land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where Network Rail acquires any part of or rights in the subsoil of, or airspace over, land under paragraph (1) it shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) shall not prevent article 15 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Rights under or over highways

9.—(1) Network Rail may enter upon and appropriate so much of the subsoil of, or air-space over, any highway within the land referred to in article 3 (power to acquire land) as may be required for the purposes of the authorised works and may use the subsoil or air-space for those purposes or any other purpose ancillary to its railway undertaking.

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

(3) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without Network Rail 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 1 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 highway which forms part of a building fronting onto the highway.

(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 that section.

Temporary possession or use of land

Temporary use of land for construction of works

10.—(1) Network Rail may, in connection with the carrying out of the authorised works, enter upon and take temporary possession of—

- (a) the land specified in column (1) of Schedule 4 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that Schedule relating to the authorised works specified in column (3) of that Schedule; and
- (b) subject to paragraph (11), any of the other land within the limits of land to be acquired or used in respect of which no notice of entry has been served under section 11 of the 1965 Act or no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981.

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

(3) Network Rail may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the work specified in relation to that land in column (3) of Schedule 4.

(4) Before giving up possession of land of which temporary possession has been taken under this article, Network Rail shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but Network Rail shall not be required to replace a building removed in connection with the carrying out of the authorised works.

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

(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 1 of the 1961 Act.

(7) Without prejudice to article 22 (no double recovery), nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5).

(8) The powers of compulsory acquisition of land conferred by this Order shall not apply in relation to the land referred to in paragraph (1)(a) except that Network Rail shall not be precluded from acquiring new rights over any land specified in Schedule 3 (land in which only new rights may be acquired) under article 6 (power to acquire new rights).

(9) Where Network Rail 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 pursuant to this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 4(1) (application of Part 1 of the Compulsory Purchase Act 1965).

(11) Paragraph (1)(b) shall not authorise Network Rail to take temporary possession of—

- (a) any land specified in Schedule 3 or Schedule 5 (land over which temporary rights of access may be exercised);
- (b) any house or garden belonging to a house; or
- (c) any building (other than a house) if it is for the time being occupied.

Temporary use of land for access

11.—(1) Network Rail may use any land specified in Schedule 5 (land over which temporary rights of access may be exercised) for the passage of persons or vehicles (with or without materials, plant and machinery) for the purpose of or in connection with the construction of the authorised works.

(2) Network Rail shall pay compensation to the owners and occupiers of the land to which paragraph (1) applies for any loss or damage arising from the exercise of the power conferred by that paragraph.

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

(4) Section 13 of the 1965 Act shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 4(1) (application of Part 1 of the Compulsory Purchase Act 1965).

Temporary use of land for maintenance of works

12.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any of the authorised works, Network Rail may enter upon and take temporary possession of any land within the limits of land to be acquired or used if such possession is reasonably required for the purpose of maintaining the authorised works or any ancillary works connected with them.

(2) Paragraph (1) shall not authorise Network Rail to take temporary possession of—

- (a) any land specified in Schedule 3 (land in which only new rights may be acquired) or Schedule 5 (land over which temporary rights of access may be exercised);
- (b) any house or garden belonging to a house; or
- (c) 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 Network Rail shall serve notice of the intended entry on the owners and occupiers of the land.

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

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

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

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.

(8) Without prejudice to article 22 (no double recovery), nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where Network Rail 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 pursuant to this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 4(1) (application of Part 1 of the Compulsory Purchase Act 1965).

(11) In this article “the maintenance period”, in relation to an authorised work, means the period of 5 years beginning with the date on which the work is opened for use.

Compensation

Disregard of certain interests and improvements

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

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

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

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

Set-off for enhancement in value of retained land

14.—(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 shall set-off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity which will accrue to that person by reason of the construction of the authorised works.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil or airspace) under article 6 (power to acquire new rights), the tribunal shall set-off against the value of the rights so acquired—

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

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

(3) The 1961 Act shall have effect, subject to paragraphs (1) and (2), as if this Order were a local enactment for the purposes of that Act.

Supplementary

Acquisition of part of certain properties

15.—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 4 (application of Part 1 of the Compulsory Purchase Act 1965)) in any case where—

- (a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on Network Rail a counter-notice objecting to the sale of the land

subject to the notice to treat which states that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, Network Rail shall pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

Extinction or suspension of private rights of way

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

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

whichever is the sooner.

(2) Subject to paragraph (6), all private rights of way over land owned by Network Rail which is within the limits of land to be acquired or used (other than land specified in Schedule 3 (land in which only new rights may be acquired), Schedule 4 (land of which temporary possession may be taken) or Schedule 5 (land over which temporary rights of access may be exercised)) and is required for the purposes of this Order shall be extinguished on the appropriation of the land for any of those purposes by Network Rail.

(3) Subject to paragraph (6), all private rights of way over land of which Network Rail takes temporary possession under this Order shall be suspended and unenforceable for as long as Network Rail 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 1 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.) applies.

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

- (a) any notice given by Network Rail before the completion of the acquisition of the land, Network Rail's appropriation of it, Network Rail's entry onto it or Network Rail's taking temporary possession of it that any or all of those paragraphs shall not apply to any right of way specified in the notice; and
- (b) any agreement which makes reference to this article (whether made 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 of way in question is vested or belongs.

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

Time limit for exercise of powers of acquisition

17.—(1) After the end of the period of 5 years beginning with the day on which this Order comes into force—

- (a) no notice to treat shall be served under Part 1 of the 1965 Act as applied to the acquisition of land by article 4 (application of Part 1 of the Compulsory Purchase Act 1965); and
- (b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981^(a) as applied by article 5 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The powers conferred by article 10 (temporary use of land for construction of works) shall cease at the end of the period referred to in paragraph (1), except that nothing in this paragraph shall prevent 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.

(a) 1981 c. 66.

PART 3
MISCELLANEOUS AND GENERAL

Statutory undertakers, etc.

18. The provisions of Schedule 6 (provisions relating to statutory undertakers, etc.) shall have effect.

Protective provisions

19. The provisions of Schedule 7 (protective provisions) shall have effect.

Certification of plans, etc.

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

Service of notices

21.—(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^(a) (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 shall be taken to be fulfilled where the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission either in writing or by electronic transmission.

(6) Where the recipient of a notice or other 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

(a) 1978 c. 30.

part of that notice or other document, the sender shall provide such a copy as soon as reasonably practicable.

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

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

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

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

No double recovery

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

Arbitration

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

Signed by the authority of the Secretary of State

7th October 2009

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

SCHEDULES

SCHEDULE 1

Article 2

AUTHORISED WORKS

In the following table—

- “the 1835 Act” means the Great Western Railway Act 1835**(a)**;
- “the 1837 Act” means the Great Western Railway Act 1837**(b)**;
- “the 1845 Act” means the Berks and Hants Railway Act 1845**(c)**;
- “the 1853 Act” means the Great Western Railway Branches Act 1853**(d)**;
- “the 1854 Act” means the Great Western Railway (Berks and Hants, and Wilts, Somerset and Weymouth) Act 1854**(e)**;
- “the 1857 Act” means the Reading Railways Junction Act 1857**(f)**;
- “the 1883 Act” means the Great Western Railway Act 1883**(g)**;
- “the 1890 Act” means the Great Western Railway Act 1890**(h)**; and
- “the 1845 Clauses Act” means the Railways Clauses Consolidation Act 1845**(i)**.

<i>(1)</i> <i>Number of land shown on land plans</i>	<i>(2)</i> <i>Description of work</i>	<i>(3)</i> <i>Authorising Act</i>
1 to 4, 6 to 14, 28, 41, 46 to 50, 52, 53, 55, 75, 78	Bridge works at Wigmore Lane, Littlejohns Lane and Cow Lane	Section 8 of the 1835 Act as applied by the 1837 Act and section 16 of the 1845 Clauses Act as incorporated with the 1883 and 1890 Acts.
5, 8, 15 to 25, 29 to 39, 75, 78	Viaduct works	Section 8 of the 1835 Act as applied by the 1837 Act.
41, 42, 45 to 50, 52, 53, 55, 56, 61, 68, 69, 75, 78	Depot works	Section 8 of the 1835 Act as applied by the 1837 Act.
71 to 74, 75, 78	Bridge works at Caversham Road	Section 8 of the 1835 Act as applied by the 1837 Act and section 16 of the 1845 Clauses Act as incorporated with the 1883 Act.

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- (a)** 1835 c. cvii.
 - (b)** 1837 c. xci.
 - (c)** 1845 c. c.xl.
 - (d)** 1853 c. cliii.
 - (e)** 1854 c. ccii.
 - (f)** 1857 c. xcvi.
 - (g)** 1883 c. exciii.
 - (h)** 1890 c. clix.
 - (i)** 1845 c. 20.

<i>(1)</i> <i>Number of land shown on land plans</i>	<i>(2)</i> <i>Description of work</i>	<i>(3)</i> <i>Authorising Act</i>
65	Widening of Hodsall Lane road bridge and new southern chord line	Section 16 of the 1845 Clauses Act as applied by the 1845 and 1854 Acts.
75, 77, 78	Platform and retaining wall north of station and northern entrance	Section 8 of the 1835 Act as applied by the 1837 Act and section 16 of the 1845 Clauses Act as incorporated with the 1853 Act.
75, 78, 81 to 89, 94 to 96, 98, 99	Retaining walls and extension of platform south of railway and works to Vastern Road bridge	Section 8 of the 1835 Act as applied by the 1837 Act and section 16 of the 1845 Clauses Act as incorporated with the 1853 and 1890 Acts.
75, 78, 100 to 104, 106 to 111	Track work east of station	Section 16 of the 1845 Clauses Act as incorporated with the 1857 and 1890 Acts.

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land shall apply with the necessary modifications as respects compensation in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without prejudice to the generality of paragraph 1, the Land Compensation Act 1973(a) shall have effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (a) for the words “land is acquired or taken” there shall be substituted the words “a right over land is purchased”; and
- (b) for the words “acquired or taken from him” there shall be substituted the words “over which the right is exercisable”.

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

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

Application of the 1965 Act

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

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

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

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

“7. In assessing the compensation to be paid by the acquiring authority under this Act regard shall be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from

(a) 1973 c.26.

other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

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

“8.—(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

- (a) a question of disputed compensation in respect of the purchase of the right would apart from this section fall to be determined by the Upper Tribunal (“the tribunal”); and
- (b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that interest, and—
 - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased without material detriment to that land; or
 - (ii) where that land consists of such a park or garden, that the right cannot be purchased without seriously affecting the amenity or convenience of the house to which that land belongs,

the Network Rail (Reading) (Land Acquisition) Order 2009^(a) (“the Order”) shall, in relation to that person, cease to authorise the purchase of the right and be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice shall be deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section shall be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”.

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

shall be so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired is vested absolutely in the acquiring authority.

7. Section 11 of the 1965 Act (powers of entry) shall be so modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right, it has power, exercisable in the like circumstances and subject to the like conditions, to enter for the purpose of exercising that right (which shall be deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act shall be modified correspondingly.

(a) S.I. .2009/2728.

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

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

SCHEDULE 3

Article 7

LAND IN WHICH ONLY NEW RIGHTS MAY BE ACQUIRED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on land plans</i>
In the Borough of Reading	5, 10, 12A, 15, 16, 19 to 25, 29 to 31, 33, 37, 53, 65, 78, 81, 87, 89, 94A, 95, 96, 98, 101 to 103 and 110.

SCHEDULE 4

Article 10

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

In the Borough of Reading—

<i>(1)</i> <i>Number of land shown on land plans</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(3)</i> <i>Authorised work</i>
1, 2, 2A, 3 and 4	Worksite and access	Bridge works
5	Worksite and access	Viaduct
6, 9 and 28	Access	Bridge works
8	Worksite	Bridge works
10	Worksite and access	Bridge works
12A	Worksite and access	Bridge works
13 and 14	Worksite	Bridge works
15 and 16	Worksite and access	Viaduct
17, 18, 19, 20, 21, 22, 23, 24, 25, 29, 30, 31, 33, 37, 38 and 39	Worksite	Viaduct
41	Worksite and access	Bridge works and depot
45	Worksite	Depot
46, 47, 48 and 49	Worksite	Bridge works and depot
50	Worksite	Depot
61	Access	Depot
70A	Worksite and access	Bridge works
75 and 78	Worksite	The authorised works
81 and 81A	Worksite	Retaining wall
84A	Worksite	Bridge works
86, 87, 94 and 94A	Worksite and access	Retaining wall
89, 89A, 95 and 95A	Worksite and access	Retaining wall
96, 96A and 98	Worksite and access	Retaining wall
97A	Access	Retaining wall
100, 101, 104, 106, 107, 108, 109, 110 and 111	Worksite	Trackwork

SCHEDULE 5

Article 11

LAND OVER WHICH TEMPORARY RIGHTS OF ACCESS MAY BE EXERCISED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on land plans</i>
In the Borough of Reading	68A, 69A, 70, 79, 80, 92, 97 and 105.

PROVISIONS RELATING TO STATUTORY UNDERTAKERS, ETC.

1. Sections 271 to 274 of the 1990 Act (power to extinguish rights of statutory undertakers etc. and power of statutory undertakers etc. to remove or re-site apparatus) shall apply in relation to any land acquired or appropriated by Network Rail under this Order subject to the following provisions of this 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) shall have effect accordingly.

2. In the provisions of the 1990 Act, as applied by 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 paragraph 1, any person who is the owner or occupier of premises to which a supply was given from that apparatus shall be entitled to recover from Network Rail compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

4. Paragraph 3 shall not apply in the case of the removal of a public sewer but where such a sewer is removed in pursuance of such a notice or order as is mentioned in that paragraph, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

shall be entitled to recover from Network Rail compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer 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 paragraph 1, as applied by that paragraph, shall not have effect in relation to apparatus as respects which Part 3 of the 1991 Act applies.

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

7. In this Schedule—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(a); and

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

(a) 2003 c. 21.
(b) 1980 c. 66.

PROTECTIVE PROVISIONS

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

(2) The provisions of Schedule 6 (provisions relating to statutory undertakers, etc.) shall not apply in relation to apparatus to which this Schedule applies.

2. In this Schedule—

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

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989^(a)) belonging to or maintained by that undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water undertaker—
 - (i) any mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply; and
 - (ii) any mains, pipes or other apparatus that are the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991^(b);
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the undertaker under the Water Industry Act 1991; and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104, and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

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

“undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986^(c);
- (c) a water undertaker within the meaning of the Water Industry Act 1991; and
- (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991, for the area of the authorised works, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

(a) 1989 c. 29.

(b) 1991 c. 56.

(c) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45), and was further amended by section 76 of the Utilities Act 2000 c. 27.

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

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

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

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

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

(4) Any alternative apparatus to be constructed in land of Network Rail under this Schedule shall be constructed in such manner and in such line or situation as may be agreed between the undertaker in question and Network Rail or in default of agreement settled by arbitration in accordance with article 23 (arbitration).

(5) The undertaker in question shall, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 23, and after the grant to the undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by Network Rail to be removed under the provisions of this Schedule.

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

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

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

6.—(1) Where, in accordance with the provisions of this Schedule, Network Rail affords to an undertaker facilities and rights for the construction and maintenance in land of Network Rail of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between Network Rail and the undertaker in question or in default of agreement settled by arbitration in accordance with article 23 (arbitration).

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

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

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

7.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 5(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by Network Rail under paragraph 5(2), Network Rail shall submit to the undertaker in question a plan, section and description of the works to be executed.

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

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

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

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

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

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

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

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

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

and the placing of apparatus of that type or capacity or 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 such placing involves cost in the construction of works under this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this paragraph would be payable to the undertaker in question by virtue of sub-paragraph (1) shall be reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

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

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

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

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

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

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

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

EXPLANATORY NOTE

(This note is not part of the Order)

This Order confers powers on Network Rail for the compulsory acquisition of land and rights over land and the temporary use of land in connection with the alteration and improvement of Reading Station and the railway and railway facilities to the east and west of the Station, as authorised by various local Acts.

The Order does not authorise the construction of works.

A copy of the land plans 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.

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STATUTORY INSTRUMENTS

2009 No. 2728

TRANSPORT AND WORKS, ENGLAND

TRANSPORT ENGLAND

The Network Rail (Reading) (Land Acquisition) Order 2009

£5.50