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STATUTORY INSTRUMENTS

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**2013 No. 198**

**TRANSPORT AND WORKS, ENGLAND**  
**TRANSPORT, ENGLAND**

**The Crossrail (Kensal Green) Order 2013**

*Made* - - - - 30th January 2013

*Coming into force* - - 20th February 2013

An application has been made to the Secretary of State in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006<sup>(1)</sup> for an Order under sections 1 and 5 of the Transport and Works Act 1992<sup>(2)</sup> (“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The Secretary of State, having considered the objections made and not withdrawn and the report of the person who held the inquiry, has determined to make an Order giving effect to the proposals comprised in the application with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 January 2013.

The Secretary of State in exercise of the powers conferred by sections 1 and 5 of, and paragraphs 1 to 5, 7, 8, 10 and 11 of Schedule 1 to, the 1992 Act, makes the following Order—

**PART 1**

**PRELIMINARY**

**Citation and commencement**

**1.** This Order may be cited as the Crossrail (Kensal Green) Order 2013 and comes into force on 20th February 2013.

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(1) S.I. 2006/1466.

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

## Interpretation

### 2.—(1) In this Order—

- “the 1961 Act” means the Land Compensation Act 1961<sup>(3)</sup>;
- “the 1965 Act” means the Compulsory Purchase Act 1965<sup>(4)</sup>;
- “the 1990 Act” means the Town and Country Planning Act 1990<sup>(5)</sup>;
- “the 1991 Act” means the New Roads and Street Works Act 1991<sup>(6)</sup>;
- “address” includes any number or address used for the purposes of electronic transmission;
- “authorised works” means the scheduled works and any other work authorised by this Order;
- “building” includes any structure or erection or any part of a building, structure or erection;
- “the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purpose of this Order;
- “Canal Way” means the land identified as plots numbers 1 and 2 on the works and land plans;
- “carriageway” has the same meaning as in the Highways Act 1980<sup>(7)</sup>;
- “designated works” means the provision of railway systems and station facilities authorised by the Crossrail Act 2008<sup>(8)</sup>, relating to the works described in Schedule 1 to that Act as Works Nos. 1/8C, 1/8D, 1/8E, 1/8F, 3/19A, 3/19B, 3/19C, 3/19D, 3/19E and 3/19F, and includes ancillary works authorised by Schedule 2 to that Act;
- “electronic transmission” means a communication transmitted—
- (a) by means of an electronic communications network; or
  - (b) by other means but while in electronic form;
- “footway” has the same meaning as in the Highways Act 1980;
- “highway” and “highway authority” have the same meanings as in the Highways Act 1980;
- “maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace, and “maintenance” is to be construed accordingly;
- “Network Rail” means Network Rail Infrastructure Limited (Company No. 02904587) whose registered office is at Kings Place, 90 York Way, London N1 9AG and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purposes of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006<sup>(9)</sup>) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;
- “the Order limits” means the limits of land to be used which are shown on the works and land plan;
- “owner”, in relation to land, has the same meaning as in the Acquisition of Land Act 1981<sup>(10)</sup>;
- “scheduled works” means the works specified in column (2) of Schedule 1 (land of which temporary possession may be taken);
- “the tribunal” means the Upper Tribunal;

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(3) 1961 c. 33.

(4) 1965 c. 56.

(5) 1990 c. 8.

(6) 1991 c. 22. As amended by the Traffic Management Act 2004 c. 18.

(7) 1980 c. 66.

(8) 2008 c. 18.

(9) 2006 c. 46.

(10) 1981 c. 67.

“the undertaker” means Crossrail Limited (Company No. 04212657) whose registered office is at 25 Canada Square, Canary Wharf, London, E14 5LQ;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“the works and land plan” means the plan certified by the Secretary of State as the works and land plan for the purposes of this Order.

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

## PART 2

### WORKS AND LANDS PROVISIONS

#### Power to carry out works

3.—(1) The undertaker may carry out the scheduled works.

(2) The scheduled works may only be carried out within the Order limits.

(3) Subject to paragraph (5), and without limitation on the scope of any other powers available to it under any other enactment, the undertaker 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 carrying out of the scheduled works, namely—

- (a) works to alter the position of apparatus, including mains, sewers, drains, pipes, cables and street furniture;
- (b) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the scheduled works; and
- (c) works for the benefit or protection of land or premises affected by the scheduled works.

(4) Subject to paragraph (5), the undertaker 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 carrying out of the scheduled works.

(5) The works specified in paragraphs (3) and (4) may only be carried out within the Order limits.

#### Access to works

4. The undertaker may, for the purposes of the authorised works—

- (a) form and lay out means of access, or improve existing means of access, in the location specified in columns (1) and (2) of Schedule 2 (access to works); and
- (b) form and lay out such other means of access or improve existing means of access, at such locations within the Order Limits as the undertaker reasonably requires for the purposes of the authorised works as may be approved by the highway authority but such approval must not be unreasonably withheld.

#### Discharge of water

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

(2) Any dispute arising from the exercise of the powers conferred by paragraph (1) to connect to or use a public sewer or drain is to be determined as if it were a dispute under section 106 of the Water Industry Act 1991<sup>(11)</sup>.

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

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

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

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2010<sup>(12)</sup>.

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Environment Agency, an internal drainage board, a local authority or a sewerage undertaker; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991<sup>(13)</sup> have the same meaning as in that Act.

### **Power to survey and investigate land**

6.—(1) The undertaker may for the purposes of this Order—

- (a) survey or investigate any land shown within the Order limits or which may be affected by the authorised works;
- (b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions as the undertaker thinks fit on the land to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land;
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes; and
- (e) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (d).

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1), unless at least 7 days’ notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required, before or after entering the land produce written evidence of authority to do so; and

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<sup>(11)</sup> 1991 c. 56.

<sup>(12)</sup> S.I. 2010/675.

<sup>(13)</sup> 1991 c. 57.

(b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes are to be made under this article—

(a) in a carriageway or footway without the consent of the highway authority; or

(b) in a private street without the consent of the street authority

but such consent must not be unreasonably withheld.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) Nothing in this article overrides the requirement to obtain scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979(14).

### **Temporary use of land for carrying out works**

7.—(1) The undertaker may, in connection with the carrying out of the authorised works—

(a) enter upon and take temporary possession of the land specified in column (1) of Schedule 1 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) 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 that land.

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

(3) The undertaker 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 designated works.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to replace a building removed under this article nor reinstate the position of apparatus altered or remove other works undertaken under article 3 (power to carry out works).

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

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(7) Without affecting article 20 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5).

(8) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(9) The undertaker may not take temporary possession of plot number 5 on the works and land plan without first obtaining the consent of Network Rail.

### **Suspension of private rights of way**

8.—(1) All private rights of way over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

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

(3) Nothing in this article affects the operation of provisions in the agreement and deed of grant referred to in article 14 (modification of provisions in agreement and deed of grant relating to Canal Way).

### **Temporary stopping up of Canal Way**

9.—(1) The undertaker, during and for the purposes of the execution of the authorised works, may temporarily stop up, alter or divert Canal Way and may for any reasonable time—

- (a) divert the traffic from Canal Way; and
- (b) subject to paragraph (2), prevent all persons from passing along Canal Way.

(2) The undertaker must provide reasonable access for pedestrians going to or from premises abutting Canal Way affected by the exercise of the powers conferred by this article if there would otherwise be no such access.

(3) The undertaker must not exercise the powers conferred by this article without first consulting the street authority for Canal Way.

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

### **Power to execute street works**

10.—(1) The undertaker may, for the purposes of the authorised works, enter upon Canal Way to the extent necessary and may—

- (a) break up or open Canal Way, or any sewer, drain or tunnel under it, or tunnel or bore under Canal Way;
- (b) place apparatus in Canal Way;
- (c) maintain apparatus in Canal Way 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 3 of the 1991 Act.

(3) This article is subject to Part 1 of Schedule 3 (provisions relating to statutory undertakers, etc.).

### **Application of Part 1 of the 1965 Act**

11.—(1) Except as provided for in paragraph (2), sections 1, 3 and 13 of the 1965 Act, in so far as not inconsistent with the provisions of this Order, apply to the temporary use of land under this Order to the same extent as they apply to a compulsory purchase to which the Acquisition of Land Act 1981(15) applies and as if this Order were a compulsory purchase Order under that Act.

(2) Section 13 of the 1965 Act does not apply to the land referred to in article 7(9).

### **Time limit for exercise of powers of temporary possession**

12. The powers conferred by article 7 (temporary use of land for carrying out of works) cease after the end of the period of 5 years beginning with the day on which this Order comes into force, but nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession of it was taken before the end of that period.

## **PART 3**

### **MISCELLANEOUS AND GENERAL**

#### **Planning permission**

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

#### **Modification of provisions in agreement and deed of grant relating to Canal Way**

14.—(1) The modifications specified in paragraph (2) have effect with respect to—

- (a) an agreement between the Secretary of State for Transport, Cross London Rail Links Limited and Fortress Limited dated 1st July 2008; and
- (b) a deed of grant relating to Plot 3, Canal Way, Royal Borough of Kensington and Chelsea between Fortress Limited and Transport for London.

(2) The modifications referred to in paragraph (1) are—

- (a) references in the agreement and the deed of grant to “authorised works” include the works authorised by this Order; and
- (b) all obligations in the agreement and the deed of grant to construct the Alternative Access Route cease to have effect.

(3) In this article, “Alternative Access Route” has the meaning given to it in the agreement referred to in paragraph (1)(a).

#### **Defence to proceedings in respect of statutory nuisance**

15.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990 (16) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within sub-paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order may be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows—

- (a) that the nuisance relates to premises used by the undertaker for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to authorised works and that the nuisance is attributable to the carrying out of authorised works which are being carried out in accordance with a notice served under section 60 (control of noise on construction sites) or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level) of the Control of Pollution Act 1974(17); or

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(16) 1990 c. 43.

(17) 1974 c. 40.

(b) that the nuisance is a consequence of the operation of the authorised works and that it cannot reasonably be avoided.

(2) The following provisions of the Control of Pollution Act 1974—

- (a) section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990); and
- (b) section 65(8) (corresponding provision in relation to consent for registered noise level to be exceeded),

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

### **Obstruction of construction of authorised works**

**16.** Any person who, without reasonable excuse—

- (a) obstructs any person acting under the authority of the undertaker in carrying out any authorised work; or
- (b) interferes with, moves or removes any apparatus belonging to any person acting under the authority of the undertaker,

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

### **Statutory undertakers, etc.**

**17.** The provisions of Schedule 3 (provisions relating to statutory undertakers, etc.) have effect.

### **Certification of plan, etc.**

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

### **Service of notices**

**19.—(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<sup>(18)</sup> 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—

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(18) 1978 c. 30.



- (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 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 of that person or address cannot be ascertained after reasonable enquiry, the notice may be served by—
- (a) addressing it to that person by name or by description of “owner”, or as the case may be “occupier”, of the land (describing it); and
  - (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.
- (5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is taken to be fulfilled where the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission either in writing or by electronic transmission.
- (6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.
- (7) Any consent to the use of electronic transmission given by a person may be revoked by that person in accordance with paragraph (8).
- (8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—
- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
  - (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.
- (9) This article does not exclude the employment of any method of service not expressly provided for by it.

### **No double recovery**

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

### **Arbitration**

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

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Signed by authority of the Secretary of State

30th January 2013

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

## SCHEDULES

### SCHEDULE 1

Article 2, 3 and 7

#### LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Number of land shown on the works and land plan.</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>
3, 4, 5, 6, 7 and 8	The provision of a working site and access for construction

### SCHEDULE 2

Article 4

#### ACCESS TO WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Description of access</i>
The Royal Borough of Kensington and Chelsea	Canal Way at its junction with Ladbroke Grove (B450)

### SCHEDULE 3

Article 17

#### PROVISIONS RELATING TO STATUTORY UNDERTAKERS, ETC.

### PART 1

#### RAILWAY AND NAVIGATION UNDERTAKINGS

1. Subject to the following provisions of this Part of this schedule, the powers under article 10 (power to execute street works) to break up or open a street are not to be exercisable where the street, not being a highway maintainable at public expense (within the meaning of the Highways Act 1980) is under the control or management of, or is maintainable by, railway or tramway undertakers or a navigation authority, except with the consent of the undertakers or authority or, as the case may be, of the person to whom the level crossing belongs.

2. Paragraph 1 does not apply to the carrying out under this Order of emergency works, within the meaning of Part 3 of the 1991 Act.

3. A consent given for the purpose of paragraph 1 may be made subject to such reasonable conditions as may be specified by the person giving it but must not be unreasonably withheld.

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

## PART 2

### PROTECTION OF NATIONAL GRID

5. In this Part of this Schedule—

“apparatus” means any mains, pipes, pressure governors, ventilators, cathodic protection, cables or other apparatus belonging to or maintained by the National Grid Gas PLC for the purposes of the conveyance or storage of gas or in the case of National Grid Electricity Transmission, electric lines of electrical plant (as defined in the Electricity Act 1989)<sup>(19)</sup> and includes any structure in which apparatus is or is to be lodged or for giving access to apparatus;

“the company” means—

- (a) National Grid Gas plc; and
- (b) National Grid Electricity Transmission plc

and includes any person succeeding the company as a gas transporter within the meaning of Part 1 of the Gas Act 1986<sup>(20)</sup> or electricity undertaker within the meaning of the Electricity Act 1989 as the case may be;

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

“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

“plans” includes sections, specifications and method statements.

#### **Temporarily stopped up streets, etc.; maintenance of apparatus**

6. In the event that Canal Way is temporarily stopped up under Article 9 (temporary stopping up of streets), the company is at liberty at all times to execute and do all such works and things in, upon or under Canal Way as may be reasonably necessary or desirable to enable it to maintain or use any apparatus which at the time of the stopping up or diversion was in that highway.

#### **The 1991 Act**

7. This Schedule does not apply to anything done or proposed to be done in relation to or affecting any apparatus in so far as the relations between the company and the undertaker are regulated by the provisions of Part 3 of the 1991 Act.

#### **Protection of apparatus**

8.—(1) Not less than 56 days before commencing the execution of any works which will affect any apparatus, the undertaker must submit to the company plans of the works to be executed.

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<sup>(19)</sup> 1989 c. 29.

<sup>(20)</sup> 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45), and was further amended by section 76 of the Utilities Act 2000 (c.27).

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(2) Those works are to be executed only in accordance with the plans submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the company for the protection of the apparatus.

(3) Any requirements made by the company under sub-paragraph (2) must be made within a period of 42 days beginning with the date on which the plans under sub-paragraph (1) are received by it.

(4) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency, but in that case it must give to the company notice as soon as is reasonably practicable and plans of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) insofar as is reasonably practicable in the circumstances.

(5) Nothing in this paragraph requires the relocation or removal of apparatus referred to.

### **Access**

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

### **Indemnity**

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the authorised works any damage is caused to any apparatus, the undertaker must—

- (a) bear and pay the cost reasonably incurred by the company in making good such damage or restoring the service, supply or conveyance; and
- (b) indemnify the company against all claims, demands, proceedings, costs, damages and expenses,

which may be made against, or recovered from, or incurred by it by reason or in consequence of any such damage or interruption or exercise by the undertaker of its powers conferred by this Order.

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

(3) The company must give the undertaker reasonable notice of any claim or demand arising under sub-paragraph (1)(b) and no settlement or compromise shall be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand with such assistance from the company as may be reasonably necessary.

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## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order authorises Crossrail Limited to construct and maintain a temporary working site at Kensal Green in the Royal Borough of Kensington and Chelsea, in connection with the construction of

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railway works authorised under the Crossrail Act 2008 to be carried out on the main line railway of Network Rail Infrastructure Limited. The Order authorises the temporary use of land for the purposes of the works and confers powers in connection with the construction and operation of ancillary works and conveniences associated with the operation and use of the working site.

Copies of the deposited plans are available for inspection at 25 Canada Square, Canary Wharf, London E14 5LQ.