

SCHEDULES

SCHEDULE 1

Article 2(1)

SCHEDULED WORKS

In the City of Wolverhampton—

<i>(1)</i> <i>Number of Work</i>	<i>(2)</i> <i>Description of Work</i>
Work No. 1	A tramway 239 metres in length (multiple lines), commencing 7 metres to the west of the junction of Bilston Street with Garrick Street and Market Street and continuing eastwards along Bilston Street, incorporating the existing St George’s tramstop, terminating at the junction of Bilston Street and Bilston Street Island.
Work No. 2	A tramway 649 metres in length (double and single lines), commencing at the junction of Piper’s Row and Bilston Street running north within the carriageway of Piper’s Row, incorporating both northbound and southbound tramstops, before turning east onto Railway Drive and travelling eastwards towards the railway station before turning south-east between the railway station and the multi-storey car park buildings, where the double track section converges to a single track prior to the railway station tramstop, with a single line headshunt continuing 81 metres past the stop and terminating 5 metres north-west from the retaining wall bounding Corn Hill underbridge.
Work No. 3	The relocation of the multi-storey car park access from Railway Drive to Corn Hill, and construction of the new railway station taxi rank and drop off area.
Work No. 4	Extension to existing Midland Metro Line 1 sub-station 2, to accommodate new tramway overhead line power equipment.

SCHEDULE 2

Article 9

STREETS SUBJECT TO ALTERATION OF LAYOUT

Key to Schedule 2

RS – Realignment of street

WS – Widening of street by setting back kerb line

NS – Narrowing of street by setting forward of kerb line

NP – Creation of new way

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

LB – Creation of parking or service bay
In the City of Wolverhampton—

<i>(1)</i> <i>Street subject to alteration of layout</i>	<i>(2)</i> <i>Description of Alteration</i>
Bilston Street	Realign the street between RS01 and RS02 to accommodate the revised layout of the existing St George's Tram stop.
Bilston Street	Realign the street between RS03 and RS04 to accommodate the revised junction layout with Piper's Row.
Piper's Row	Widen the street between WS01 and WS02 to accommodate the new tracks and revised junction layout with Bilston Street.
Piper's Row	Realign the street between RS05 and RS06 to accommodate the new track alignment.
Tower Street	Narrow street between NS01 and NS02 to accommodate coach stop displaced from Piper's Row.
Tower Street	Realign street between RS07 and RS08 to accommodate new access to Piper's Row NCP car park.
Piper's Row	Widen the street between WS03 and WS04 to accommodate new track and tramstops on Piper's Row and allow egress from Wolverhampton Bus Station.
Castle Street	Realign street between RS09 and RS10 to accommodate new junction alignment with Piper's Row.
Piper's Row	Realign the street between RS10 and RS11 to accommodate new track alignment.
Queen Street (south side)	Construct loading bay between LB01 and LB02 on south side of Queen street, near junction with Piper's Row to accommodate loading activities displaced from Piper's Row.
Piper's Row (east side)	Extend and widen existing loading bay on Piper's Row between LB03 and LB04 to accommodate two vehicles.
Piper's Row/Railway Drive	Widen street between WS05 and WS06 to accommodate new track alignment through junction of Piper's Row and Railway Drive.
Lichfield Street	Realign street between RS11 and RS12 to accommodate new track alignment and associated works.
Railway Drive	Realign street between RS13 and RS14 to accommodate new track alignment and create a pedestrian zone.
Corn Hill	Realign street between RS15 and RS16 to accommodate new access to the railway station forecourt.
Corn Hill	Create new way between NP01 and NP02 to accommodate new access to the railway station forecourt.

SCHEDULE 3

Article 12

STREETS TO BE TEMPORARILY STOPPED UP

In the City of Wolverhampton—

<i>(1)</i> <i>Street affected</i>	<i>(2)</i> <i>Extent of stopping up</i>
Bilston Street	Between its junction with Garrick Street/Market Street and Bilston Street Island.
Piper's Row	Between its junction with Bilston Street and Railway Drive.
Court access (Piper's Row)	Court access to be closed at its junction with Piper's Row.
Bus Station Egress (Piper's Row)	Bus Station exit to be closed at its junction with Piper's Row.
CRC Manhattan/Wulfrun Hotel alley	Alleyway to be closed at its junction with Piper's Row.
Tower Street	At its junction with Piper's Row.
Castle Street	At its junction with Piper's Row.
Queen Street	At its junction with Piper's Row.
Berry Street	At its junction with Piper's Row.
Railway Drive	Between its junction with Piper's Row and the railway station forecourt.
Corn Hill	From the south side of Mill Street bridge for a distance of 100 metres in a north-easterly direction.
Lichfield Street	At its junction with Piper's Row.
Fryer Street	At its junction with Railway Drive.
Chillington Street	At its junction with Bilston Road.

SCHEDULE 4

Article 31

ACQUISITION OF NEW RIGHTS ONLY

In the City of Wolverhampton—

<i>(1)</i> <i>Description</i>	<i>(2)</i> <i>Number of land shown on works and land plans</i>
1,522 square metres of police station and premises (Wolverhampton Central Police Station)	2
676 square metres of nightclub and premises (CRC Mannhattans, 36 Piper's Row)	17

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(1) <i>Description</i>	(2) <i>Number of land shown on works and land plans</i>
114 square metres of hotel and premises (Wulfrun Hotel, 37 Piper’s Row), ground floor shop and vacant basement and premises (43 Queen Street)	18
117 square metres of shop and premises (42 Queen Street)	20
2,014 square metres of hotel and premises (Britannia Hotel, 80 Lichfield Street)	22
165 square metres of restaurant, studio and premises (79-81 Lichfield Street)	24
2,668 square metres of bus station and premises (Wolverhampton Bus Station, Piper’s Row)	26
1,310 square metres of public highway (Victoria Square)	27
1,334 square metres of yard and premises (Railway Drive and Victoria Square)	28
1,663 square metres of public parking area (Railway Street)	30

SCHEDULE 5

Article 30

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 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 limitation on the scope of paragraph 1, the Land Compensation Act 1973(1) has 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 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 4—

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

(1) 1973 c. 26.

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(3) For section 58(1)(2) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 (other provisions as to divided land) of the 1965 Act as substituted by paragraph 5, substitute—

“(1) In determining under section 8(1) or 34(2) of the Compulsory Purchase Act 1965, or section 166(2) of the Town and Country Planning Act 1990 whether—

- (a) a right over land consisting of a house, building or manufactory can be taken without material detriment or damage to the house, building or manufactory; or
- (b) a right over land consisting of a park or garden belonging to a house can be taken without seriously affecting the amenity or convenience of the house,

the Upper Tribunal must take into account not only the effect of the acquisition of the right but also the use to be made of the right proposed to be acquired, and, in a case where the right is proposed to be acquired for works or other purposes extending to other land, the effect of the whole of the works and the use to be made of the other land.”

Application of the 1965 Act

3.—(1) The 1965 Act has 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 limitation on the scope of sub-paragraph (1), Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act applies 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 (measure of compensation in case of severance) of the 1965 Act substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act regard must 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 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 (other provisions as to divided land) of the 1965 Act substitute—

“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 Lands Chamber of the Upper Tribunal (“the tribunal”); and

(2) Section 58(1) was amended by section 16(3) of, and Schedule 5 to, the Compulsory Purchase (Vesting Declarations) Act 1981 (c. 66), section 4 of, and paragraph 29(1) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2009/1307.

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- (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 Midland Metro (Wolverhampton City Centre Extension) Order 2016(3) (“the Order”), in relation to that person, ceases to authorise the purchase of the right and is 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 is 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 is to 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 affects 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),

are modified so 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(4) (powers of entry) of the 1965 Act is modified so 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 equivalent circumstances and subject to the equivalent conditions, to enter for the purpose of exercising that right (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12(5) (penalty for unauthorised entry) and 13(6) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

8. Section 20(7) (protection for interests of tenants at will, etc.) of the 1965 Act applies 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

(3) [S.I. 2016/684](#).

(4) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1) and [S.I. 2009/1307](#).

(5) Section 12 was amended by section 56(2) of, and part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).

(6) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(7) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 and [S.I. 2009/1307](#).

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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 (interests omitted from purchase) of the 1965 Act is modified so 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 6

Article 33

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

In the City of Wolverhampton—

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans</i>	<i>(3)</i> <i>Purposes for which temporary possession may be taken</i>	<i>(4)</i> <i>Authorised work</i>
Tower Street	6	Highway works	Work No. 2
Tower Street including NCP Car Park	13	Highway works and construction compound	Work No. 2
Castle Street	15	Highway works	Work No. 2
Queen Street	19	Highway works	Work No. 2
Ring Road St Davids, including Bus station access and Crown court access	9, 10, 11	Highway works and temporary construction area	Work No. 2
Railway Drive (Banana Yard)	40	Construction compound	Work No. 2
Railway Drive (Railway Station)	41	Temporary construction area (demolition)	Work No. 2
Area in front of multi-storey car park	42a	Construction compound	Work No. 2
Multi-storey car park at Rail Station	43	Construction area for works to modify multi-storey car park	Work No. 3
Corn Hill	44, 45, 46, 47, 60	Construction compound	Work No. 3
Corn Hill	52, 54, 54a, 58	Temporary construction area (demolition)	Work No. 3

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<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans</i>	<i>(3)</i> <i>Purposes for which temporary possession may be taken</i>	<i>(4)</i> <i>Authorised work</i>
Corn Hill	56, 57	Highway works and temporary construction area (demolition)	Work No. 3
Chillington Street	61, 62, 64a, 65	Temporary construction area	Work No. 4

SCHEDULE 7

Articles 2(1) and 43

TRAFFIC REGULATION

Interpretation

In column (1) of each of the tables, the number refers to the relevant traffic regulation reference number shown on the traffic regulation plan. In the event of there being any discrepancy between a provision in this Schedule and the illustration of that provision shown on the traffic regulation plan, this Schedule prevails.

PART 1

STOPPING, WAITING OR UNLOADING

In the City of Wolverhampton—

Table 1**No waiting at any time**

<i>(1)</i> <i>No.</i>	<i>(2)</i> <i>Road</i>	<i>(3)</i> <i>Extent</i>	<i>(4)</i> <i>Notes</i>
1.1	Tower Street	North side from its junction with Piper's Row in a westerly direction for a distance of 59 metres	Removes 4 pay and display spaces Mon – Sat 8.30am – 4pm
1.2	Castle Street	South side from its junction with Piper's Row in a westerly direction for a distance of 25 metres	Removes 1 pay and display bay

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Table 2

No loading at any time

(1) No.	(2) Road	(3) Extent	(4) Notes
2.1	Piper's Row	West side from its junction with Tower Street in a northerly direction to its junction with Castle Street	Currently no loading Mon –Sat 8.30am – 9.30am and 5pm – 6.30pm
2.2	Piper's Row	West side from its junction with Castle Street in a northerly direction to its junction with Queen Street	Currently no loading Mon –Sat 8.30am – 9.30am and 5pm – 6.30pm
2.3	Piper's Row	West side from its junction with Queen Street in a northerly direction to its junction with Berry Street	Currently unrestricted loading
2.4	Piper's Row	East side from its junction with Bilston Street in a northerly direction along its entire length	Currently no loading Mon –Sat 8.30am – 9.30am and 5pm – 6.30pm
2.5	Tower Street	North side from its junction with Piper's Row in a westerly direction for a distance of 59 metres	Removes 4 pay and display spaces Mon – Sat 8.30am – 4pm Currently unrestricted loading
2.6	Castle Street	South side from its junction with Piper's Row in a westerly direction for a distance of 25 metres	Currently unrestricted loading. Removes 1 pay and display space
2.7	Castle Street	North side from its junction with Piper's Row in a westerly direction for a distance of 25 metres	Currently unrestricted loading
2.8	Queen Street	North side from its junction with Piper's Row in a westerly direction for a distance of 25 metres	Currently unrestricted loading
2.9	Berry Street	Both sides from its junction with Piper's Row in a north-westerly direction for a distance of 17 metres	Currently unrestricted loading
2.10	Railway Drive	Both sides from its junction with Piper's Row for its entire length	Currently unrestricted loading or no loading 8.30am – 9.30 and 5pm – 6.30pm

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<i>(1)</i> <i>No.</i>	<i>(2)</i> <i>Road</i>	<i>(3)</i> <i>Extent</i>	<i>(4)</i> <i>Notes</i>
2.11	Corn Hill	Both sides from its junction with Horseley Fields in a northerly direction for a distance of 175 metres	Currently no loading Mon –Sat 8.30am – 9.30am and 5pm – 6.30pm

Table 3

Loading restricted to specified times

<i>(1)</i> <i>No.</i>	<i>(2)</i> <i>Road</i>	<i>(3)</i> <i>Extent</i>	<i>(4)</i> <i>Notes</i>
3.1	Piper’s Row	East side from a point 26 metres south of its junction with Railway Drive for a distance of 22 metres in a southerly direction. No loading Monday to Sat 9.30am – 4pm	Extension of existing loading bay

Table 4

Goods vehicle loading bay

<i>(1)</i> <i>No.</i>	<i>(2)</i> <i>Road</i>	<i>(3)</i> <i>Extent</i>	<i>(4)</i> <i>Notes</i>
4.1	Queen Street	South side from a point 20 metres west of its junction with Piper’s Row for a distance of 24 metres in a westerly direction	

Table 5

Taxi Clearway/Pay and Display parking

<i>(1)</i> <i>No.</i>	<i>(2)</i> <i>Road</i>	<i>(3)</i> <i>Extent</i>	<i>(4)</i> <i>Notes</i>
5.1	Castle Street	South side from a point 20 metres west of its junction with Piper’s Row for a distance of 6 metres in a westerly direction	Removes pay and display bay in order to replace the Taxi bay

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Table 6

Bus Stop clearway

<i>(1)</i> <i>No.</i>	<i>(2)</i> <i>Road</i>	<i>(3)</i> <i>Extent</i>	<i>(4)</i> <i>Notes</i>
6.1	Tower Street	South side from a point 40 metres east of its junction with Market Street for a distance of 31 metres in a easterly direction	Required for non-local bus services

PART 2

DIRECTION OF VEHICULAR TRAFFIC

In the City of Wolverhampton—

Table 7

One way traffic except for tramcars and pedal cycles

<i>(1)</i> <i>No.</i>	<i>(2)</i> <i>Road</i>	<i>(3)</i> <i>Extent</i>	<i>(4)</i> <i>Notes</i>
7.1	Railway Drive	One way traffic in a westbound direction for its entire length	Two way flow change to one way flow in a westerly direction for access vehicles only (also see 9.5)

Table 8

Prescribed movement

<i>(1)</i> <i>No.</i>	<i>(2)</i> <i>Road</i>	<i>(3)</i> <i>Extent</i>	<i>(4)</i> <i>Notes</i>
8.1	Lichfield Street	Compulsory left turn from Lichfield Street onto Fryer Street, except for buses, taxis, private hire vehicles and defined (ring and ride) vehicles and access to loading bay	

PART 3

PROHIBITION OF VEHICULAR TRAFFIC

In the City of Wolverhampton—

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Table 9**Prohibition of driving**

<i>(1)</i> <i>No.</i>	<i>(2)</i> <i>Road</i>	<i>(3)</i> <i>Extent</i>	<i>(4)</i> <i>Notes</i>
9.1	Piper's Row	Prohibition 24 hours except tramcars, northbound nearside lane from its junction with Tower Street in a northerly direction to its junction with Castle Street	
9.2	Piper's Row	Prohibition 24 hours except tramcars, southbound offside lane from its junction with Bilston Street for a distance of 46 metres in a northerly direction	
9.3	Piper's Row	Prohibition 24 hours except tramcars, northbound offside lane from its junction with Bilston Street for a distance of 18 metres in a northerly direction	
9.4	Piper's Row	Prohibition of driving 24 hours except tramcars, buses, taxis, private hire vehicles and defined (ring and ride) vehicles and access to loading bay, from its junction with Berry Street to its junction with Lichfield Street/Railway Drive	Existing pedestrian zone amended to allow passage of tramcars.
9.5	Railway Drive	Prohibition of driving 24 hours except tramcars, pedal cycles and access, from its junction with Piper's Row for its entire length	

Table 10**Prohibition of movement**

<i>(1)</i> <i>No.</i>	<i>(2)</i> <i>Road</i>	<i>(3)</i> <i>Extent</i>	<i>(4)</i> <i>Notes</i>
10.1	Piper's Row	No right turn from Piper's Row onto Railway Drive except tramcars and pedal cycles	
10.2	Fryer Street	No left turn from Fryer Street onto Railway Drive	

SCHEDULE 8

Article 45

PROVISIONS RELATING TO STATUTORY UNDERTAKERS, ETC.

Apparatus of statutory undertakers, etc. on land acquired

1.—(1) Subject to the following provisions of this paragraph, sections 271 to 274(8) (power to extinguish rights of statutory undertakers etc. and power of statutory undertakers etc. to remove or re-site apparatus) of the 1990 Act apply in relation to any land which has been acquired under this Order, or which is held by the Authority and is appropriated or used (or about to be used) by it for the purposes of this Order or for purposes connected with those provisions; 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 section 271 and 272, and sections 279(2) to (4), 280 and 282(9) which provide for the payment of compensation) have effect accordingly.

(2) In the provisions of the 1990 Act, as applied by sub-paragraph (1)—

- (a) references to the appropriate Minister are references to the Secretary of State;
- (b) references to the purpose of carrying out any development with a view to which land was acquired or appropriated are references to the purpose of carrying out the authorised works; and
- (c) references to land acquired or appropriated as mentioned in section 271(1) of the 1990 Act are references to land acquired, appropriated or used as mentioned in sub-paragraph (1).

(3) Where any apparatus of public utility undertakers or of an operator of an electronic communications code network is removed in pursuance of a notice or order given or made under section 271, 272 or 273 of the 1990 Act, as applied by sub-paragraph (1), any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the Authority compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(4) Sub-paragraph (3) does not apply in the case of the removal of a public sewer, but where such a sewer is removed in pursuance of such a notice or order as is mentioned in that paragraph, any person who is—

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

is entitled to recover from the Authority compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making that person's drain or sewer communicate with any other public sewer or with a private sewage disposal plant.

(5) The provisions of the 1990 Act mentioned in sub-paragraph (1), as applied by that sub-paragraph, do not have effect in relation to apparatus as respects which paragraph 2, or Part 3 of the 1991 Act applies (including that Part as applied by article 5 (application of the 1991 Act)).

(6) In this paragraph—

“electronic communications code” means the code set out in Schedule 2 to the Telecommunications Act 1984(10);

(8) Section 272 to 274 were amended by paragraph 103(1) and (2) of Schedule 17 to the Communications Act 2003 (c. 21).

(9) Section 279(3) was amended by paragraph 103(1) and (2), and section 280 was amended by paragraph 104, of Schedule 17 to the Communications Act 2003. Sections 280 and 282 were amended by S.I. 2009/1307.

(10) 1984 c. 12; Schedule 2 was amended by the New Roads and Street Works Act 1991 (c. 22), Schedule 8 paragraphs 113 and 115, and the Communications Act 2003, Schedule 3.

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“electronic communications code network” means an electronic communications network within the meaning of the Communications Act 2003(11) to which the electronic communications code applies; and

“public utility undertakers” has the same meaning as the Highways Act 1980(12).

Apparatus of statutory undertakers, etc., in stopped up streets

2.—(1) Where a street is stopped up under this Order any statutory utility whose apparatus is under, in, upon, over, along or across the street has the same powers and rights in respect of that apparatus, subject to the provision of this paragraph, as if this Order had not been made.

(2) Where a street is stopped up under this Order any statutory utility whose apparatus is under, in, upon, over, along or across the street may where reasonably necessary for the efficient operation of the undertaking of the statutory utility and, if reasonably requested so to do by the Authority, must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in that other position.

(3) Subject to the following provisions of this paragraph, the Authority must pay to any statutory utility an amount equal to the cost reasonably incurred by the statutory utility in or in connection with—

- (a) the execution of relocation works required in consequence of the stopping up of the street; and
- (b) the doing of any other work or thing rendered necessary by the execution of relocation works.

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

- (a) apparatus of better type, of greater capacity or of greater dimension 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 of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the Authority, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this paragraph would be payable to the statutory utility by virtue of sub-paragraph (3) will be reduced by the amount of that excess.

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

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

(6) An amount which apart from this sub-paragraph would be payable to a statutory utility in respect of works by virtue of sub-paragraph (3) (and having regard, where relevant, to sub-

(11) 2003 c. 21.

(12) 1980 c. 66.

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paragraph (4)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the statutory utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Sub-paragraphs (3) to (6) do not apply where the authorised works constitute major transport works or major highway works for the purposes of Part 3 (street works in England and Wales) of the 1991 Act (including that Part as applied by article 5 (application of the 1991 Act)), but instead—

- (a) the allowable costs of the relocation works are to be determined in accordance with section 85 (sharing of costs of necessary measures) of that Act and any regulations for the time being having effect under that section; and
- (b) the allowable costs are to be borne by the Authority and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this paragraph—

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

“relocation works” means works executed, or apparatus provided, under sub-paragraph (2); and

“statutory utility” means a statutory undertaker for the purposes of the Highways Act 1980 or an operator of an electronic communications code network as defined in paragraph 1(6).

Application of telecommunications code

3.—(1) Paragraph 21 of the electronic communications code does not apply for the purposes of the authorised works to the extent that such works are regulated by Part 11 of the 1990 Act, sections 84 and 85 of the 1991 Act (or regulations made under section 85 of that Act), paragraph 2 or sub-paragraph (3).

(2) Paragraph 23 of the electronic communications code applies for the purposes of the authorised works, except—

- (a) in so far as such works are regulated by the 1991 Act or any regulation made under that Act; or
- (b) where the Authority exercises a right under subsection (4)(b) of section 272 of the 1990 Act or under an order made under that section to remove apparatus.

(3) The temporary stopping up, alteration or diversion of any highway under article 12 (temporary stopping up of streets) does not affect any right of an operator of an electronic communications code network under paragraph 9 of the electronic communications code in respect of any apparatus which at the time of the stopping up or diversion is in the highway.

(4) In this paragraph—

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

“electronic communications code” and “electronic communications code network” have the same meaning as in paragraph 1(6).

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SCHEDULE 9

Article 54

FOR THE PROTECTION OF RAILWAY INTERESTS

1. The following provisions of this Schedule have effect, unless otherwise agreed in writing between the Authority and Network Rail and, in the case of paragraph 15, any other person on whom rights or obligations are conferred by that paragraph.

2. In this Schedule—

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

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of the powers under section 8(13) (licences) of the Railways Act 1993;

“Network Rail” means Network Rail Infrastructure Limited (registered company number 2904587) whose registered office is at 1 Eversholt Street, London, NW1 2DN and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006(14)) 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;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail for the purposes of such railway or works, apparatus or equipment; and

“specified work” means so much of any of the authorised works as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

3.—(1) Where under this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the Authority with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements arising from those procedures; and

(13) Section 8 was amended by paragraph 3 of Schedule 20 to the Railways and Transport Safety Act 2003 (c. 20), paragraph 1 of Schedule 13(1) to the Railways Act 2005 (c. 14) and paragraph 4 of Schedule 17 to the Transport Act 2000 (c. 38). There are other amendments not relevant to this Order.

(14) 2006 c. 46.

- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised works under this Order.

4.—(1) The Authority must not exercise the powers conferred by article 19 (attachment of equipment to buildings), article 21 (works to safeguard buildings and the operation of the authorised tramway), article 22 (power to survey and investigate land), article 25 (power to construct temporary tramway), article 27 (power to acquire land), article 32 (rights under or over streets), article 30 (powers to acquire new rights), article 33 (temporary use of land for construction of works), article 34 (temporary use of land for maintenance of works), article 38 (extinction or suspension of private rights of way), or the powers conferred by section 11(3) of the 1965 Act or the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by this Order in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The Authority must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The Authority must not exercise the powers conferred by section 271 (extinguishment of rights of statutory undertakers: preliminary notices) or 272 (extinguishment of rights of telecommunications code system operators: preliminary notices) of the 1990 Act, as applied by Schedule 8 (provisions relating to statutory undertakers), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The Authority must not under the powers conferred by this Order acquire or use, or acquire new rights over, any railway property except with the consent of Network Rail.

(5) The Authority must not exercise any powers under this Order to—

- (a) demolish all or any part of the existing station building including preparatory works for such demolition; or
- (b) demolish any part of the multi-storey car park,

unless such demolition is with the consent of Network Rail.

(6) Where Network Rail is asked to give its consent under this paragraph, that consent must not be unreasonably withheld but may be given subject to reasonable conditions.

(7) In this paragraph—

“the existing station building” means the station building at Wolverhampton railway station described in plots 41 and 42 of the book of reference and shown on the works and land plans; and

“the multi-storey car park” means the multi-storey car park to the south of the existing station building which is described in plot 43 of the book of reference and shown on the works and land plans.

5.—(1) The Authority must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated disapproval of those plans and the grounds of such disapproval the Authority may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the Authority. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer is deemed to have approved the plans as submitted.

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(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the Authority that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the Authority desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the Authority in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the Authority.

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using those railways (including any relocation, de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the Authority, if Network Rail so desires, and such protective works must be carried out at the expense of the Authority in either case without unnecessary delay and the Authority must not commence the construction of the specified works until the engineer has notified the Authority that the protective works have been completed to the engineer's reasonable satisfaction.

6.—(1) Any specified work and any protective works to be constructed under paragraph 5(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic on it and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of, a specified work, the Authority must, regardless of any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Schedule imposes any liability on the Authority with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents, or any liability on Network Rail with respect to any damage, costs, expenses or loss attributable to the negligence of the Authority or its servants, contractors or agents.

7. The Authority must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

8. Network Rail must at all times afford reasonable facilities to the Authority and its agents for access to any works carried out by Network Rail under this Schedule during their construction and

must supply the Authority with such information as it may reasonably require with regard to such works or the method of constructing them.

9.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the Authority reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the Authority must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the Authority, Network Rail gives notice to the Authority that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the Authority decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the Authority must, regardless of any such approval of a specified work under paragraph 5(1), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a) provide such details of the formula by which those sums have been calculated as the Authority may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the Authority to Network Rail under this paragraph.

10. The Authority must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the Authority as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the Authority and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watchkeepers and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may, in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

11.—(1) In this paragraph—

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“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised works (including the operation of tramcars using the tramway comprised in the works) where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised works) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other similar means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 5(1) for the relevant part of the authorised works giving rise to EMI (unless the Authority has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the Authority must in the design and construction of the authorised works take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the Authority’s compliance with sub-paragraph (3)—

- (a) the Authority must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and subsequently must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the Authority all information in the possession of Network Rail reasonably requested by the Authority in respect of Network Rail’s apparatus identified under sub-paragraph (a); and
- (c) Network Rail must allow the Authority reasonable facilities for the inspection of Network Rail’s apparatus identified under sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail’s apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of their execution are to be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(1) has effect subject to this sub-paragraph.

(6) If at any time prior to the commencement of regular revenue-earning operations on the authorised tramway comprised in the authorised works and regardless of any measures adopted under sub-paragraph (3), the testing or commissioning of the authorised works causes EMI then the Authority must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the Authority’s apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail’s apparatus.

(7) In the event of EMI having occurred—

- (a) the Authority must afford reasonable facilities to Network Rail for access to the Authority’s apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the Authority for access to Network Rail’s apparatus in the investigation of such EMI; and

- (c) Network Rail must make available to the Authority any additional material information in its possession reasonably requested by the Authority in respect of Network Rail's apparatus or such EMI.
- (8) Where Network Rail approves modifications to Network Rail's apparatus under sub-paragraph (5) or (6)—
 - (a) Network Rail must allow the Authority reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and
 - (b) any modifications to Network Rail's apparatus approved under those sub-paragraphs must be carried out and completed by the Authority in accordance with paragraph 6.
- (9) To the extent that it would not otherwise do so, the indemnity referred to in paragraph 15(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.
- (10) For the purpose of paragraph 10(a) any modifications to Network Rail's apparatus under this paragraph are deemed to be protective works referred to in that paragraph.
- (11) In relation to any dispute arising under this paragraph the reference in article 53 (arbitration) to the Institution of Civil Engineers are to be read as a reference to the Institution of Engineering and Technology.
- 12.** If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the Authority informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the Authority must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.
- 13.** The Authority must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.
- 14.** Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the Authority, be repaid by the Authority to Network Rail.
- 15.—(1)** The Authority must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Schedule which may be occasioned to or reasonably incurred by Network Rail—
 - (a) by reason of the construction or maintenance of a specified work or the failure of such a work; or
 - (b) by reason of any act or omission of the Authority or of any person in its employ or of its contractors or others whilst engaged upon a specified work,

and the Authority must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the Authority or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the supervision of the engineer does not (if it was done without negligence on

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the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the Authority from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the Authority reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand may be made without the prior consent of the Authority.

(3) The sums payable by the Authority under sub-paragraph (1) must include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs is, in the event of default, enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator under sub paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail’s railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

16. Network Rail must, on receipt of a request from the Authority, from time to time provide the Authority free of charge with written estimates of the costs, charges, expenses and other liabilities for which the Authority is or will become liable under this Schedule (including the amount of the relevant costs mentioned in paragraph 15) and with such information as may reasonably enable the Authority to assess the reasonableness of any such estimate or claim made or to be made under this Schedule (including any claim relating to those relevant costs).

17. In the assessment of any sums payable to Network Rail under this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the Authority under this Schedule or increasing the sums so payable.

18. The Authority and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the Authority of—

- (a) any railway property shown on the works and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

19. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 of the Railways Act 1993.

20. The Authority must give written notice to Network Rail if any sale, lease or disposal is proposed to be made under section 54 (powers of disposal, agreements for operation, etc.) of the 1989 Act and any such notice must be given no later than 28 days before any such sale, lease or disposal is made and must describe or give (as appropriate)—

- (a) the nature of the sale, lease or disposal to be made;

- (b) the extent of the geographical area to which the sale, lease or disposal will relate; and
- (c) the name and address of the person to whom the sale, lease or disposal is to be made.

21. The Authority must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 50 (certification of plans) are certified by the Secretary of State, provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

SCHEDULE 10

Article 55

FOR THE PROTECTION OF THE CANAL AND RIVER TRUST

1. For the protection of the Canal & River Trust the following provisions of this Schedule, unless otherwise agreed in writing between the Authority and CRT, have effect.

Interpretation

2. In this Schedule—

“CRT” means the Canal & River Trust;

“CRT’s network” means CRT’s network of waterways;

“CRT Property” means any waterway belonging to CRT and any land structure works apparatus and equipment belonging to CRT and any land held or used by CRT for the purposes of such waterway, structure, works, apparatus or equipment;

“construction”, in relation to any specified work or protective work, includes—

- (a) the execution and placing of that work; and
 - (b) any relaying, renewal, alteration reconstruction or maintenance of that work as may be carried out during the period of 24 months from the completion of that work; and
- “construct” and “constructed” have corresponding meanings;

“detriment” means any damage to the waterway or any other property of CRT and, without limitation on the scope of that meaning, includes—

- (a) any obstruction of, or interference with, or hindrance or danger to, navigation or to any use of the waterway (including towing paths);
- (b) the erosion of the bed or banks of the waterway, or the impairment of the stability of any works, lands or premises forming part of the waterway;
- (c) the deposit of materials or the siltation of the waterway so as to damage the waterway;
- (d) the pollution of the waterway;
- (e) any significant alteration in the water level of the waterway, or significant interference with the supply of water to it, or drainage of water from it;
- (f) any harm to the ecology of the waterway (including any adverse impact on any site of special scientific interest comprised in CRT’s network); and
- (g) any interference with the exercise by any person of rights over CRT’s network;

“the engineer” means an engineer appointed by CRT for the purpose in question;

“plans” includes sections, designs, drawings, specifications, soil reports, vibration monitoring reports, calculations, descriptions (including descriptions of methods of construction) and programmes and details of the extent timing and duration of any proposed occupation of CRT Property and stoppages of the CRT network;

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“practical completion” means practical completion of all of the specified work regardless of any items which would ordinarily be considered snagging items that remain outstanding, and the expression “practically complete” and “practically completed” are construed accordingly;

“protective work” means a work constructed under paragraph 8(3)(a);

“specified work” means so much of any of the authorised works as is situated upon, across, under, over or within 15 metres of, or may in any way affect, the waterway;

“towing path” means the towing path forming part of the waterway; and

“waterway” means the Birmingham Canal, and includes the towpath tunnel, and any works, land or premises belonging to CRT, or under its management or control, and held or used by CRT in connection with a canal or inland navigation.

Powers requiring CRT’s consent

3.—(1) The Authority must not under the powers conferred by this Order acquire compulsorily any CRT Property.

(2) The Authority must not under the powers conferred by this Order acquire any easement or other right over CRT Property, or use CRT Property or divert the waterway or stop navigation of the waterway or use the towing path except where such acquisition or use is with the consent of CRT.

(3) The Authority must not in the exercise of the powers conferred by this Order obstruct or interfere with pedestrian or vehicular access to a waterway unless such obstruction or interference with such access is with the consent of CRT.

(4) The Authority must not exercise any power conferred by this Order in such a way as to interfere with the supply of water to, or the drainage of water from or into, a waterway unless such exercise is with the consent of CRT.

(5) The Authority must not exercise the powers conferred by article 12 (temporary stopping up of streets) in relation to any way over land comprised in a waterway, unless such exercise is with the consent of CRT.

(6) The Authority must not exercise the powers conferred by article 26 (temporary interference with waterways) in relation to any moorings or rights over land comprised in a waterway unless such exercise is with the consent of CRT.

(7) The Authority must not exercise the powers conferred by article 22 (authority to survey and investigate land) or section 11(3) of the 1965 Act (power of entry for surveying land) in relation to a waterway unless such exercise is with the consent of CRT.

(8) The Authority must not exercise the powers conferred by section 271 or 272 of the 1990 Act, as applied by Schedule 8 (provisions relating to statutory undertakers, etc.), so as to divert any right of access to a waterway, but such right of access may be diverted with the consent of CRT.

(9) Nothing in article 20 (discharge of water) authorises the Authority to—

- (a) discharge any water directly or indirectly into a waterway; or
- (b) carry out any works to, or make any opening in, or otherwise interfere with, a waterway (including the banks and bed of a waterway),

except with the consent of CRT and on terms that CRT may reasonably require, and in accordance with plans approved by, and under the supervision (if given) of, the engineer.

(10) The consent of CRT under sub-paragraphs (1) to (9) must not be unreasonably withheld or delayed but may be given subject to reasonable terms and conditions which in the case of article 20 (discharge of water) may include conditions—

- (a) specifying the location, maximum volume and velocity of water which may be discharged in any period; and

- (b) authorising CRT on giving reasonable notice (except in an emergency, when CRT may require immediate suspension) to the Authority to require the Authority to suspend the discharge of water or reduce the flow of water where this is necessary by reason of any operational or environmental requirement of CRT.

Vehicles, plant and machinery

4.—(1) The Authority must not use any land or property of CRT forming part of the waterway for the passage or siting of vehicles, plant or machinery employed in the construction of the specified works other than—

- (a) with the consent in writing of the engineer whose consent must not be unreasonably withheld; and
- (b) subject to compliance with such reasonable requirements as the engineer may from time to time specify—
 - (i) for the prevention of detriment; or
 - (ii) in order to avoid or reduce any inconvenience to CRT, its officers and agents and all other persons lawfully on such land or property,

but nothing in this paragraph applies in relation to anything done in accordance with any approval given by CRT under paragraph 8.

Closure of towing paths, etc.

5. If in consequence of or in connection with the exercise of the powers conferred by this Order any part of a towing path or any public right of way giving access to a towing path (“the closed section”) is temporarily closed to persons on foot on cycles or in a wheelchair and there is no way which provides a reasonable alternative, the Authority must to the reasonable satisfaction of CRT provide in substitution a sufficient and convenient way for such persons between the points of commencement and termination of the closed section for such time as the closure continues.

Fencing

6. Where so required by the engineer the Authority must to the reasonable satisfaction of the engineer fence off a specified work or a protective work or take such other steps as the engineer may require to be taken for the purpose of separating a specified work or a protective work from a waterway, whether on a temporary or permanent basis or both.

Survey of waterway

7.—(1) Before the commencement of the initial construction of any part of the specified works and again following practical completion of the specified works the Authority must bear the reasonable cost of the carrying out by a qualified engineer (“the surveyor”), to be approved by CRT and the Authority, and who may be an engineer employed by CRT, a survey including a dip-survey to measure the depth of the waterway (“the survey”) of so much of the waterway and of any land and existing works of the Authority which may provide support for the waterway as will or may be affected by the specified works.

- (2) For the purposes of the survey the Authority must—
 - (a) on being given reasonable notice (except in case of emergency, when immediate access must be afforded) afford reasonable facilities to the surveyor for access to the site of the specified works and to any land and existing works of the Authority which may provide support for the waterway as will or may be affected by the specified works; and

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(b) supply the surveyor as soon as reasonably practicable with all such information as the surveyor may reasonably require with regard to such existing works of the Authority and to the specified works or the method of their construction.

(3) The reasonable costs of the survey include the costs of any dewatering or reduction of the water level of any part of the waterway (where reasonably required) which may be effected to facilitate the carrying out of the survey and the provisions of this part of this Schedule apply with all necessary modifications to any such dewatering or reduction in the water level as though the same were specified works.

(4) Copies of the survey must be provided to both CRT and the Authority at no cost to CRT.

Approval of plans, protective works etc.

8.—(1) The Authority must before commencing construction of any specified work comprising part of the authorised works including any temporary works supply to CRT proper and sufficient plans of that work and such further particulars available to it as CRT may within 28 days of the submission of the plans reasonably require for the approval of the engineer and must not commence such construction of a specified work until plans of that work have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld or delayed, and if within 56 days after such plans (including any other particulars reasonably required under sub-paragraph (1) above) have been supplied to CRT the engineer has not intimated his disapproval of those plans and the grounds of his disapproval the engineer is deemed to have approved the plans as submitted.

(3) When signifying approval of the plans the engineer may specify—

(a) any protective work (whether temporary or permanent) which in the reasonable opinion of the engineer should be carried out before the commencement of the construction of a specified work to prevent detriment and to ensure the safety and stability of CRT Property and safe operation of the waterway; and

(b) such other requirements as may be reasonably necessary to prevent detriment,

and such protective works must be constructed by the Authority or by CRT at the Authority's request with all reasonable dispatch and the Authority must not commence the construction of a specified work until the engineer has notified the Authority that the protective works have been completed to the engineer's reasonable satisfaction, which is not to be unreasonably withheld or delayed.

(4) The Authority must pay to CRT a capitalised sum representing the reasonably increased or additional cost of maintaining and, when necessary, renewing any works, including any permanent protective works provided under sub-paragraph (3), and of carrying out any additional dredging of the waterway necessitated by the exercise of any of the powers conferred by this Order but if the cost of maintaining the waterway, or of works of renewal of the waterway, is reduced in consequence of any such works, a capitalised sum representing such reasonable saving must be set off against any sum payable by the Authority to CRT under this paragraph.

(5) In the event that the Authority fails to complete the construction of, or part of, the specified works CRT may, if it is reasonably required in order to avoid detriment, construct any of the specified works, or part of such works, (together with any adjoining works) in order to complete the construction of, or part of, the specified works or make such works and the Authority must reimburse CRT all costs, fees, charges and expenses it has reasonably incurred in carrying out such works within 28 days of receipt of an invoice together with appropriate evidence of the costs or expenses incurred.

Design of works

9. Without affecting its obligations under the provisions of this Schedule the Authority must consult, collaborate and respond constructively to any approach, suggestion, proposal or initiative made by CRT on—

- (a) the design and appearance of the specified works, including the materials to be used for their construction; and
- (b) the environmental effects of that work,

and must have regard to such views as may be expressed by CRT to the extent that these accord with the requirements of the local planning authority in response to such consultation pursuant in particular (but without limitation) to the requirements imposed on CRT by section 22 (general environmental and recreational duties) of the British Waterways Act 1995⁽¹⁵⁾ and to the interest of CRT in preserving and enhancing the environment of its waterways.

Notice of works

10. The Authority must give to the engineer 56 days' notice of its intention to commence the construction of any of the specified or protective works, or, in the case of repair carried out in an emergency, such notice as may be reasonably practicable so that, in particular, CRT may where appropriate arrange for the publication of notices bringing those works to the attention of users of CRT's network.

Lighting

11. The Authority must provide and maintain at its own expense in the vicinity of the specified or protective works such temporary lighting and such signal lights for the control of navigation as the engineer may reasonably require during the construction or failure of the specified or protective works.

Construction of specified works

12.—(1) Any specified or protective works must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under the provisions in paragraph 8 and with any requirements made under paragraph 8(5) and paragraph 9;
- (b) under the supervision (if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little detriment as is reasonably practicable; and
- (d) in such manner as to cause as little inconvenience as is reasonably practicable to CRT, its officers and agents and all other persons lawfully using the waterways, except to the extent that temporary obstruction has otherwise been agreed by CRT.

(2) Nothing in this Order authorises the Authority to make or maintain any permanent works in or over the waterway so as to impede or prevent (whether by reducing the width or navigation headroom of the waterway) the passage of any vessel which is of a kind (as to its dimensions) for which CRT is required by section 105(1)(b) and (2) (maintenance of waterways) of the Transport Act 1968⁽¹⁶⁾ to maintain the waterway.

(3) Following the completion of the construction of the specified works the Authority must restore the waterway to a condition in the reasonable opinion of CRT no less satisfactory than its condition immediately prior to the commencement of those works.

(15) 1995 c. i.

(16) 1968 c. 73. This is amended by Schedule 2 of S.I. 2012/1659.

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Prevention of pollution

13. The Authority must not in the course of constructing a specified work or a protective work or otherwise in connection with those works do or permit anything which may result in the pollution of the waterway or the deposit of materials in it and must take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph.

Access to work: provision of information

- 14.—(1) The Authority on being given reasonable notice must—
- (a) at all reasonable times and subject to any operational or safety requirements allow reasonable facilities to the engineer for access to a specified work during its construction; and
 - (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.
- (2) CRT on being given reasonable notice must—
- (a) at all times afford reasonable facilities to the Authority and its agents for access to any works carried out by CRT under this part of this Schedule during their construction; and
 - (b) supply the Authority with such information as it may reasonably require with regard to such works or the method of constructing them and the Authority must reimburse CRT's reasonable costs in relation to the supply of such information.

Alterations to waterway

15.—(1) If during the construction of a specified work or a protective work (or during a period of 24 months after the completion of those works) any alterations or additions, either permanent or temporary, to a waterway are reasonably necessary in consequence of the construction of the specified work or the protective work in order to avoid detriment, and CRT gives to the Authority reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the Authority must pay to CRT the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by CRT in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If the cost of maintaining, working or renewing the waterway is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the Authority to CRT under this paragraph.

Maintenance of works

16. If at any time after the completion of a specified work or a protective work, not being a work vested in CRT, CRT gives notice to the Authority informing it that the state of maintenance of the work appears to be such that the work is causing or likely to cause detriment, the Authority must, on receipt of such notice, take such steps as may be reasonably necessary to put the work in such state of maintenance as not to cause such detriment.

Repayment of CRT's fees, etc.

17. The Authority must repay to CRT all fees, costs, charges and expenses reasonably incurred by CRT—

- (a) in constructing any protective works under the provisions of paragraph 8(3)(a);

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- (b) in respect of the approval by the engineer of plans submitted by the Authority and the supervision by the engineer of the construction or repair of a specified work and any protective works;
- (c) in respect of the employment during the construction of the specified works or any protective works of any inspectors, watchkeepers and other persons whom it is reasonably necessary to appoint for inspecting any waterway and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works or any protective works; and
- (d) in bringing the specified works or any protective works to the notice of users of CRT's network.

Cost of alterations

18. Any additional expenses which CRT may reasonably incur in altering, reconstructing or maintaining a waterway under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the Authority, be repaid by the Authority to CRT.

Making good of detriment; compensation and indemnity, etc.

19.—(1) If any detriment is caused by the construction or failure of the specified works or the protective works if carried out by the Authority, the Authority (if so required by CRT) must make good such detriment and must pay to CRT all reasonable expenses to which CRT may be put, and compensation for any loss which CRT may sustain, in making good or otherwise by reason of the detriment.

(2) The Authority is responsible for and must make good to CRT all costs, charges, damages, expenses and losses not otherwise provided for in this Schedule which may be occasioned to or reasonably incurred by CRT—

- (a) by reason of the construction of a specified work or a protective work or the failure of such a work; or
- (b) by reason of any act or omission of the Authority or of any person in its employ or of its contractors or others whilst engaged upon the construction of a specified work or a protective work,

and subject to sub-paragraph (4) the Authority must fully and effectively indemnify and hold harmless CRT from and against all claims and demands arising out of or in connection with any of the matters referred to in paragraphs (a) and (b).

(3) The fact that any act or thing may have been done by CRT on behalf of the Authority or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision or in accordance with any directions or awards of an arbitrator does not (if it was done without negligence on the part of CRT or of any person in its employ or of its contractors or agents) excuse the Authority from any liability under the provisions of this paragraph.

(4) CRT must give the Authority reasonable notice of any such claim or demand as referred to in sub-paragraph (2) and no settlement or compromise of such a claim or demand is to be made without the prior consent of the Authority (such consent not to be unreasonably withheld or delayed).

Details of capitalised sums to be provided

20. If CRT and the Authority cannot jointly agree the formula by which the capitalised sum is calculated it must be settled by arbitration in accordance with article 53 (arbitration).

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Arbitration

21. Any difference arising between the Authority and CRT under this Schedule (other than a difference as to the meaning or construction of this Schedule) must be referred to and settled by arbitration in accordance with article 53 (arbitration).

Statutory powers

22. Except as provided by this Order nothing in this Order is to prejudice or derogate from the estate, rights, interests, privileges, liberties or franchises of CRT or alter or diminish any power authority or jurisdiction vested in CRT at the making of this Order.