

SCHEDULE 1

Article 8

LAND IN WHICH ONLY NEW RIGHTS ETC., MAY BE ACQUIRED

(1) <i>Area</i>	(2) <i>Number of land shown on the deposited plans</i>	(3) <i>Purpose for which rights may be acquired</i>
County of Nottinghamshire	19 to 21	Access
District of Mansfield		

SCHEDULE 2

Article 8

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASING 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 1961 Act has effect subject to the following modification set out in sub-paragraph (2).

(2) For section 5A(5A) (relevant valuation date) of the 1961 Act substitute—

“(5A) If—

- (a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 3 to the Network Rail (Kings Mill No. 1 Level Crossing) (Land Acquisition and Closure) Order 2018),
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 3 to the Network Rail (Kings Mill No. 1 Level Crossing) (Land Acquisition and Closure) Order 2018) to acquire an interest in the land, and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land when it entered on that land for the purpose of exercising that right.”

3.—(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-paragraph (2).

(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 5(3)—

- (a) for the words “land is acquired or taken” substitute “a right over land is acquired”; and

---

(1) 1973 c. 26.

*Status: This is the original version (as it was originally made).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

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

#### *Application of the 1965 Act*

4. Part 1 of the 1965 Act, as applied by article 6 (application of Part 1 of the 1965 Act) to the acquisition of land under article 5(1) (power to acquire land), applies to the compulsory acquisition of rights under article 8(1) (power to acquire new rights) —

- (a) with the modifications specified in paragraph 5; and  
(b) with such other modifications as may be necessary.

5.—(1) The modifications referred to in paragraph 4(a) are as follows.

(2) References in the 1965 Act to land are, in appropriate contexts, 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.

(3) 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.”

(4) 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 of 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.

(5) Section 11(2) (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right as well as the notice of entry required by subsection (1) of that section (as it applies to a compulsory acquisition under article 6(1)), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right; and sections 11A(3) (powers of entry: further notices of entry), 11B(4) (counter-notice requiring possession to be taken on specified date), 12(5)(penalty

---

(2) 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), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.

(3) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).

(4) Section 11B was inserted by section 187(2) of the Housing and Planning Act 2016 (c. 22).

(5) Section 12 was amended by section 56(2) of, and part 1 of Schedule 9 to, the Courts Act 1971 (c. 23) and paragraph 4 of Schedule 16 to the Housing and Planning Act 2016 (c. 22).

for unauthorised entry) and 13(6) (refusal to give possession to acquiring authority) of that Act are modified accordingly.

(6) 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 a compulsory acquisition of the land under this Order, but taking into account only the extent (if any) of such interference with such interests as is actually caused, or likely to be caused, by the exercise of the right in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act (as modified by article 6(7)) 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.

(8) For Schedule 2A to the 1965 Act substitute—

#### “SCHEDULE 2A

#### COUNTER-NOTICE REQUIRING PURCHASE OF LAND

##### ***Introduction***

1. This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over the whole or part of a house, building or factory.

2. In this Schedule, “house” includes any park or garden belonging to a house.

##### ***Counter-notice requiring purchase of land***

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

##### ***Response to counter-notice***

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

6. The acquiring authority must serve notice of its decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the authority decides to refer the counter-notice to the Upper Tribunal it must do so within the decision period.

8. If the authority does not serve notice of a decision within the decision period it is to be treated as if it had served notice of a decision to withdraw the notice to treat at the end of that period.

---

(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.

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

9. If the acquiring authority serves notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

***Determination by Upper Tribunal***

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right,
- (b) the proposed use of the right, and
- (c) if 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 of the other land.

12. If the Upper Tribunal determines that the acquisition of the right would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the acquiring authority ought to be required to take.

13. If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in that land.

14.—(1) If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph it must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”

SCHEDULE 3

Article 9

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on the deposited plan</i>	<i>(3)</i> <i>Purposes for which temporary possession may be taken</i>
County of Nottinghamshire	2, 4 and 10	Worksite and access
Districts of Ashfield and Mansfield	3	Worksite and access Creation of new public right of way

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

(1) <i>Area</i>	(2) <i>Number of land shown on the deposited plan</i>	(3) <i>Purposes for which temporary possession may be taken</i>
Count of Nottinghamshire	7 and 11 to 16	Worksite and access
District of Ashfield	18	Access

## SCHEDULE 4

Articles 14 and 15

## 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 the Kings Mill No. 1 level crossing, any land which has been acquired under this Order, or which is held by Network Rail and is appropriated or used (or about to be used) by it for the purposes of the development or for purposes connected with the development and for purposes connected with the creation of the new public right of way; and all such other provisions of that Act as apply for the purposes of those provisions (including sections 275 to 278, which contain provisions consequential on the extinguishment of any rights under sections 271 and 272, and sections 279(2) to (4), 280 and 282(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 closure of the Kings Mill No. 1 level crossing or carrying out the development or carrying out the creation of the new public right of way as defined in article 2 (interpretation) of this Order; 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 Network Rail compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

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

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

(8) Sections 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.

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

is entitled to recover from Network Rail compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer 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 Part 3 of the 1991 Act applies.

(6) In this paragraph—

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

“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 in the Highways Act 1980(12).

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

2.—(1) Where Kings Mill No. 1 level crossing and the existing bridleway are stopped up under article 3 (closure of Kings Mill No. 1 level crossing) any statutory utility whose apparatus is under, in, upon, along or across the King’s Mill No. 1 level crossing or the existing bridleway has the same powers and rights in respect of that apparatus, subject to the provisions of this paragraph, as if this Order had not been made.

(2) Where the Kings Mill No. 1 level crossing and the existing bridleway are stopped up under article 3 any statutory utility whose apparatus is under, in, upon, over, along or across the Kings Mill No. 1 level crossing or the existing bridleway may, and if reasonably requested to do so by Network Rail must—

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

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

- (a) the execution of the relocation works required in consequence of the stopping up of the Kings Mill No. 1 level crossing or the existing bridleway; and
- (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

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

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

(10) 1984 c. 12. Schedule 2 was amended by section 190 of, and paragraph 68 of Schedule 25 and part 1 of Schedule 27 to, the Water Act 1989 (c. 15), section 112(4) of, and Schedule 18 to, the Electricity Act (c. 29), paragraphs 113-115 of Schedule 8 and Schedule 9 to the 1991 Act, section 107(2) of, and Schedule 4 to, the Arbitration Act 1996 (c. 23), section 25(1) of, and paragraph 22 of Schedule 3 to, the Trusts of Land and Appointment of Trustees Act 1996 (c. 47), section 406(7) of, and Schedule 3, paragraph 75 of Schedule 17 and Schedule 19 to, the Communications Act 2003 (c. 21), section 80(3) of and part 2 of Schedule 22 to, the Marine and Coastal Access Act 2009 (c. 23), S.I. 1993/3160, S.I. 2006/1177 and S.I. 2009/1307.

(11) 2003 c. 21.

(12) 1980 c. 66.

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

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

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

(6) An amount which apart from this sub-paragraph would be payable to a statutory utility in respect of works by virtue of sub-paragraph (3) (and having regard, where relevant, to sub-paragraph (4)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Sub-paragraphs (3) to (6) do not apply where the works constitute major transport works for the purposes of Part 3 of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works are to be determined in accordance with section 85 (sharing of cost 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 Network Rail and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this paragraph—

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

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

“statutory utility” means—

- (a) a statutory undertaker for the purposes of the 1980 Act; or
- (b) a public communications provider within the meaning of section 151(1) of the Communications Act 2003.