

2018 No. 923

TRANSPORT AND WORKS, ENGLAND

TRANSPORT, ENGLAND

The Network Rail (Werrington Grade Separation) Order 2018

Made - - - - *3rd August 2018*

Coming into force - - *24th August 2018*

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An application has been made to the Secretary of State, in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006^(a) for an Order under sections 1, 3 and 5 of the Transport and Works Act 1992^(b) (“the 1992 Act”).

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

The Secretary of State, having considered the objections made and not withdrawn, and the report of the person who held the inquiry, has determined to make an Order giving effect to the proposals comprised in the application with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

Notice of the Secretary of State’s determination was published in the London Gazette on 1st August 2018.

The Secretary of State, in exercise of the powers conferred by sections 1, 3 and 5 of, and paragraphs 1 to 5, 7, 8, 10, 11 and 16 of Schedule 1 to, the 1992 Act makes the following Order—

PART 1

PRELIMINARY

Citation and Commencement

1. This Order may be cited as the Network Rail (Werrington Grade Separation) Order 2018 and comes into force on 24th August 2018.

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961^(c);

(a) S.I. 2006/1466, as amended by S.I. 2010/439, S.I. 2011/556, S.I. 2011/2085, S.I. 2012/147, S.I. 2012/1658, S.I. 2012/2590, S.I. 2013/755 and S.I. 2017/1070.
 (b) 1992 c. 42. Section 1 was amended by the Planning Act 2008 (c. 29), Schedule 2, paragraphs 51 and 52; section 5 was amended by S.I. 2012/1659.
 (c) 1961 c. 33.

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

“the 1980 Act” means the Highways Act 1980(b);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(c);

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

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

“the 2003 Act” means the Communications Act 2003(f);

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

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

“the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

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

“building” includes any structure or erection or any part of a building, structure or erection;

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

“cycle track” has the same meaning as in the 1980 Act;

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

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

“electronic transmission” means a communication transmitted—

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

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

“footpath” and “footway” have the same meanings as in the 1980 Act;

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

“limits of deviation” means the limits of deviation for the scheduled works shown on the deposited plans;

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

“Network Rail” means Network Rail Infrastructure Limited (company registration number 02904587) whose registered office is at 1 Eversholt Street, London, NW1 2DN;

“Order land” means the land shown on the deposited plans which is within the limits of land to be acquired or used and described in the book of reference;

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

“owner”, in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(g);

“road hump” has the same meaning as in the 1980 Act;

“the scheduled works” means the works specified in Schedule 1 (scheduled works) or any part of them;

“statutory undertaker” means—

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- (a) 1965 c. 56.
- (b) 1980 c. 66.
- (c) 1981 c. 66.
- (d) 1990 c. 8.
- (e) 1991 c. 22.
- (f) 2003 c. 21.
- (g) 1981 c. 67. The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34). There are other amendments to section 7 not relevant to this Order.

- (a) any person who is a statutory undertaker for any of the purposes of the 1990 Act; and
- (b) any public communications provider within the meaning of section 151(1)(a) of the 2003 Act;

“street” includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“the tribunal” means the Lands Chamber of the Upper Tribunal; and

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

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the air-space above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in Network Rail’s railway undertaking.

(3) References in this Order to numbered plots are references to plot numbers on the deposited plans.

(4) All distances, directions and lengths referred to in this Order are approximate and distances between points on a scheduled work are taken to be measured along that work.

(5) References in this Order to points identified by letters with or without numbers, are construed as references to points so lettered on the deposited plans.

(6) References in this Order to numbered works are references to the scheduled works as numbered in Schedule 1.

Incorporation of the Railway Clauses Acts

3.—(1) The following provisions of the Railways Clauses Consolidation Act 1845(b) are incorporated in this Order—

section 58(c)(company to repair roads used by them), except for the words from “and if any question” to the end;

section 61 (company to make sufficient approaches and fences to highways crossing on the level);

section 68 (accommodation works by company);

section 71 (additional accommodation works by owners), except for the words “or directed by such justices to be made by the company” and “or, in case of difference, as shall be authorised by two justices”;

sections 72 and 73 (supplementary provisions relating to accommodation works);

section 77 (presumption that minerals excepted from acquisition of land);

sections 78 to 83, 85 to 85E and Schedules 1 to 3 (minerals under railways), as respectively substituted and inserted by section 15 of the Mines (Working Facilities and Support) Act 1923(d);

section 103(e) (refusal to quit carriage at destination);

section 105 (carriage of dangerous goods on railway), except for the words from “and if any person” to “for every such offence”; and

(a) There are amendments to section 151(1) not relevant to this Order.

(b) 1845 c. 20.

(c) There are amendments to section 58 not relevant to this Order.

(d) 1923 c. 20. Section 79A was amended by section 48(1)(c) of the Coal Industry Nationalisation Act 1946 (c. 59). Section 85 was amended by virtue of section 17(2)(a) of the Interpretation Act 1978 (c. 30).

(e) As amended by the Statute Law Revision Act 1892 (c. 19), Part 3 of Schedule 7 to the Justices of the Peace Act 1949 (c. 101) and section 46 of the Criminal Justice Act 1982 (c. 48).

section 145(a) (recovery of penalties).

(2) Section 12 (signals, watchmen etc.) of the Railways Clauses Act 1863(b) is incorporated in this Order.

(3) In those provisions, as incorporated in this Order—

“the company” means Network Rail;

“goods” includes any thing conveyed on the railway authorised to be constructed by this Order;

“lease” includes an agreement for a lease;

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

“the railway” means any railway authorised to be constructed by this Order and any other authorised work; and

“the special Act” means this Order.

Application of the 1991 Act

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

(a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of that Act (which defines what highway authority works are major highway works); or

(b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64(c) (dual carriageways and roundabouts) of the Highways Act 1980.

(2) The provisions of the 1991 Act mentioned in paragraph (3) (which, together with other provisions of that Act, apply in relation to the carrying out of street works) and any regulations made or code of practice issued or approved under those provisions apply (with the necessary modifications) in relation to the temporary stopping up, temporary alteration or temporary diversion of a street by Network Rail under the powers conferred by article 11 (temporary stopping up of streets) and the carrying out of works under article 9 (power to execute street works) whether or not the stopping up, alteration or diversion, or the carrying out of such works, constitutes street works within the meaning of that Act.

(3) The provisions of the 1991 Act referred to in paragraph (2) are—

section 59(d) (general duty of street authority to co-ordinate works);

section 60 (general duty of undertakers to co-operate);

section 68 (facilities to be afforded to street authority);

section 69 (works likely to affect other apparatus in the street);

section 76 (liability for cost of temporary traffic regulation); and

section 77 (liability for cost of use of alternative route), and

all such other provisions as apply for the purposes of the provisions mentioned above.

(4) Nothing in article 12 (construction and maintenance of new or altered streets)—

(a) prejudices the operation of section 87 (prospectively maintainable highways) of the 1991 Act; and Network Rail is not, by reason of any duty under that article to maintain a street,

(a) As amended by the Statute Law Revision Act 1892 and Part 2 of Schedule 12 to the Transport Act 1962 (c. 46).

(b) 1863 c. 92.

(c) As amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(2) of, and Schedule 9 to, the New Roads and Street Works Act 1991 (c. 22).

(d) As amended by section 42 of the Traffic Management Act 2004 (c. 18).

to be taken to be a street authority in relation to that street for the purposes of Part 3 of that Act; or

- (b) has effect in relation to street works with regard to which the provisions of Part 3 of the 1991 Act apply.

Disapplication of legislative provisions

5.—(1) The following provisions do not apply in relation to any works executed under the powers conferred by this Order—

- (a) regulation 12(1)(a) (environmental permit required for operating a regulated facility) of the Environmental Permitting (England and Wales) Regulations 2016(a) in relation to the carrying out of a relevant flood risk activity;
- (b) section 23 (prohibition on obstacles etc. in watercourses) of the Land Drainage Act 1991(b); and
- (c) the provisions of any byelaws made under, or having effect as if made under, section 66 (powers to make byelaws) of that Act, which require consent or approval for the carrying out of the works.

(2) In article 5(1)(a) “relevant flood risk activity” means an activity within paragraph 3(1)(a), (b) or (c) of Schedule 25 (flood risk activities and excluded flood risk activities) to the Environmental Permitting (England and Wales) Regulations 2016.

PART 2

WORKS PROVISIONS

Principal powers

Power to construct and maintain works

6.—(1) Network Rail may construct and maintain the scheduled works.

(2) Subject to article 7 (power to deviate) the scheduled works may only be constructed in the lines or situations shown on the deposited plans and in accordance with the levels shown on the sections.

(3) Subject to paragraph (5), Network Rail may carry out and maintain such of the following works as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works, namely—

- (a) electrical equipment and signalling works;
- (b) ramps, means of access and footpaths, bridleways and cycle tracks;
- (c) embankments, aprons, abutments, retaining walls, wing walls and culverts;
- (d) works to install or alter the position of apparatus, including mains, sewers, drains and cables;
- (e) demolition of—
 - (i) Monkams, Hurn Road, Werrington, PE6 7HU;
 - (ii) 1549 Lincoln Road, Werrington, PE6 7HH; and
 - (iii) 1551 Lincoln Road, Werrington, PE6 7HH;
- (f) partial demolition of the boundary wall running parallel with Brook Drain to the rear of properties at Coningsby Road; and
- (g) a retention pond to the southwest of the East Coast Mainline railway corridor.

(a) S.I. 2016/1154, as amended by S.I. 2017/1012, S.I. 2017/1075, S.I. 2018/110, S.I. 2018/428 and S.I. 2018/575.

(b) 1991 c. 59.

(4) Subject to paragraph (5), Network Rail may carry out such other works (of whatever nature) as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the authorised works.

(5) Paragraphs (3) and (4) only authorise the carrying out or maintenance of works outside the limits of deviation if such works are carried out on—

- (a) land specified in columns (1) and (2) of Schedule 2 (acquisition of land for ancillary works) for the purpose specified in column (3) of that Schedule;
- (b) land specified in column (1) of Schedule 8 (land in which only new rights etc. may be acquired) for the purposes specified in column (2) of that Schedule; or
- (c) land specified in columns (1) and (2) of Schedule 10 (land of which temporary possession may be taken) for the purposes specified in column (3) of that Schedule and in relation to the authorised works specified in column (4) of that Schedule.

(6) Network Rail may, within the Order limits—

- (a) carry out and maintain landscaping and other works to mitigate any adverse effects of the construction, maintenance and operation of the authorised works (other than works authorised by this paragraph); and
- (b) carry out and maintain works for the benefit or protection of land affected by the authorised works (other than works authorised by this paragraph).

Power to deviate

7. In constructing or maintaining any of the scheduled works, Network Rail may—

- (a) deviate laterally from the lines or situations shown on the deposited plans to the extent of the limits of deviation for that work; and
- (b) deviate vertically from the levels shown on the sections—
 - (i) to any extent upwards not exceeding 3 metres; or
 - (ii) to any extent downwards as may be found to be necessary or convenient.

Streets

Power to alter layout etc. of streets

8.—(1) Network Rail may for the purposes of the authorised works alter the layout of, or carry out any works in, the street specified in columns (1) and (2) of Schedule 3 (streets subject to alteration of layout) in the manner specified in relation to that street in column (3).

(2) Without limitation on the scope of the specific powers conferred by paragraph (1) but subject to paragraphs (3) and (4), Network Rail may, for the purposes of constructing and maintaining any scheduled work, alter the layout of any street within the Order limits and the layout of any street having a junction with such a street; and, without limitation on the scope of that power, Network Rail may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;
- (b) alter the level or increase the width of any such kerb, footpath, footway, cycle track or verge;
- (c) reduce the width of the carriageway of the street; and
- (d) temporarily remove any road hump within the street.

(3) Network Rail must restore to the reasonable satisfaction of the street authority any street which has been temporarily altered under this article.

(4) The powers conferred by paragraph (2) are not to be exercised without the consent of the street authority, but such consent must not be unreasonably withheld.

(5) If within 28 days of receiving an application for consent under paragraph (4) a street authority fails to notify Network Rail of its decision or refuses consent without giving any grounds for its refusal that street authority is deemed to have granted consent.

Power to execute street works

9.—(1) Network Rail may, for the purposes of the authorised works, enter on any of the streets specified in Schedule 4 (streets subject to street works) as are within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) place apparatus in the street;
- (c) maintain apparatus in the street or change its position; and
- (d) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b) and (c).

(2) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

Stopping up of streets

10.—(1) Subject to the provisions of this article, Network Rail may, in connection with the construction, maintenance and operation of the authorised works, stop up each of the streets specified in columns (1) and (2) of Parts 1 and 2 of Schedule 5 (streets to be stopped up) to the extent specified in column (3) of those Parts of that Schedule.

(2) No street specified in columns (1) and (2) of Part 1 of Schedule 5 is to be wholly or partly stopped up under this article unless—

- (a) the new street to be constructed and substituted for it, which is specified in column (4) of that Part of that Schedule, has been constructed and completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and subsequently maintained by Network Rail, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).

(3) No street specified in columns (1) and (2) of Part 2 of Schedule 5 (being a street to be stopped up for which no substitute is to be provided) is to be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the land which abuts on either side of the street to be stopped up.

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

- (a) Network Rail is in possession of the land; or
- (b) there is no right of access to the land from the street concerned; or
- (c) there is reasonably convenient access to the land otherwise than from the street concerned; or
- (d) the owners and occupiers of the land have agreed to the stopping up.

(5) Where a street has been stopped up under this article—

- (a) all rights of way over or along the street so stopped up are extinguished; and
- (b) Network Rail may appropriate and use for the purposes of its railway undertaking so much of the site of the street as is bounded on both sides by land owned by Network Rail.

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

Temporary stopping up of streets

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

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without limitation on the scope of paragraph (1), Network Rail may use any street stopped up under the powers conferred by this article within the Order limits as a temporary working site.

(3) Network Rail must provide reasonable access for pedestrians going to or from premises abutting on a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(4) Without limitation on the scope of paragraph (1), Network Rail may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule 6 (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the deposited plans, in column (3) of that Schedule.

(5) Network Rail must not exercise the powers conferred by this article—

- (a) in relation to any street specified as mentioned in paragraph (4) without first consulting the street authority; and
- (b) in relation to any other street without the consent of the street authority which may attach reasonable conditions to any consent, but such consent must not be unreasonably withheld.

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

(7) If within 28 days of receiving an application for consent under paragraph (5)(b) a street authority fails to notify Network Rail of its decision or refuses consent without giving any grounds for its refusal that street authority is deemed to have granted consent.

Construction and maintenance of new or altered streets

12.—(1) Any street to be constructed under this Order must be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed between Network Rail and the highway authority, must be maintained by and at the expense of Network Rail for a period of 12 months from its completion and from the expiry of that period by and at the expense of the highway authority.

(2) Where a street is altered or diverted under this Order, the altered or diverted part of the street must, when completed to the reasonable satisfaction of the street authority, unless otherwise agreed with the street authority, be maintained by and at the expense of Network Rail for a period of 12 months from its completion and from the expiry of that period by and at the expense of the street authority.

(3) Paragraphs (1) and (2) do not apply in relation to the structure of any bridge or tunnel carrying a street over or under any railway of Network Rail and except as provided in those paragraphs Network Rail is not liable to maintain the surface of any street under or over which the scheduled works are constructed, or the immediate approaches to any such street.

(4) In any action against Network Rail in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without affecting any other defence or the application of the law relating to contributory negligence) to prove that Network Rail had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(5) For the purposes of a defence under paragraph (4), the court must in particular have regard to the following matters—

- (a) the character of the street and the traffic which was reasonably to be expected to use it;

- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether Network Rail knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and
- (e) where Network Rail could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant to prove that Network Rail had arranged for a competent person to carry out or supervise the maintenance of the part of the street to which the action relates unless it is also proved that Network Rail had given the competent person proper instructions with regard to the maintenance of the street and that the competent person had carried out those instructions.

Access to works

13.—(1) Network Rail may, for the purposes of the authorised works—

- (a) form and lay out means of access, or improve existing means of access, in the locations specified in columns (1) and (2) of Schedule 7 (access to works); and
- (b) with the approval of the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as Network Rail reasonably requires for the purposes of the authorised works.

(2) If a highway authority fails to notify Network Rail of its decision within 28 days of receiving an application for approval under paragraph (1), that highway authority is deemed to have granted approval.

Agreements with street authorities

14.—(1) A street authority and Network Rail may enter into agreements with respect to—

- (a) the construction of any new street (including any structure carrying the street over or under a railway) under the powers conferred by this Order;
- (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (c) the maintenance of the structure of any bridge constructed under the powers conferred by this Order;
- (d) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
- (e) the execution in the street of any of the works referred to in article 9(1) (power to execute street works).

(2) Such an agreement may, without limitation on the scope of paragraph (1)—

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

Construction of bridges

15.—(1) Any bridge to be constructed under this Order for carrying a highway over or under a railway must be constructed in accordance with the plans and specifications approved by the highway authority (such approval not to be unreasonably withheld).

(2) If within 28 days of receiving an application for approval under paragraph (1) a highway authority fails to notify Network Rail of its decision or refuses approval without giving any grounds for its refusal that highway authority is deemed to have granted approval.

Supplemental powers

Discharge of water

16.—(1) Network Rail may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction, operation or maintenance of the authorised works and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by Network Rail under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(a).

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

(4) Network Rail must not make any opening into any public sewer or drain except—

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

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

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

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2016(b).

(8) If a person who receives an application for consent or approval fails to notify Network Rail of a decision within 28 days of receiving an application for consent under paragraph (3) or approval under paragraph (4)(a) that person is deemed to have granted consent or given approval, as the case may be.

(9) In this article—

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

Power to survey and investigate land

17.—(1) Network Rail may for the purposes of this Order—

- (a) survey or investigate any land shown within the Order limits;

(a) 1991 c. 56. Section 106 was amended by sections 35(1), 35(8) and 43(2) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43), sections 36(2) and 99 of the Water Act 2003 (c. 37) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c. 29).

(b) S.I. 2016/1154, as amended by S.I. 2017/1012, S.I. 2017/1075, S.I. 2018/110, S.I. 2018/428 and S.I. 2018/575.

(c) 1991 c.57.

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

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

(3) Notice given in accordance with paragraph (2) must include—

- (a) a statement of the recipient's rights under paragraph (15); and
- (b) a copy of any warrant issued under paragraph (8).

(4) If Network Rail proposes to do any of the following, the notice must include details of what is proposed—

- (a) searching, boring or excavating;
- (b) leaving apparatus on the land;
- (c) taking samples;
- (d) an aerial survey;
- (e) carrying out any other activities that may be required to facilitate compliance with the instruments mentioned in paragraph (5).

(5) The instruments referred to in paragraph (4)(e) are—

- (a) Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment^(a); or
- (b) Council Directive 92/42/EEC of 21 May 1992 of the on the conservation of natural habitats and of wild fauna and flora^(b).

(6) If Network Rail obtains a warrant after giving notice in accordance with paragraph (2) it must give a copy of the warrant to all those to whom it gave that notice.

(7) Any person entering land under this article on behalf of Network Rail—

- (a) must, if so required, before or after entering the land produce written evidence of authority to do so including any warrant issued under paragraph (8); and
- (b) may not use force unless a justice of the peace has issued a warrant under paragraph (8) authorising the person to do so;
- (c) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes;
- (d) may only enter and survey land at a reasonable time; and
- (e) must, if the land is unoccupied or the occupier is absent from the land when the person enters it, leave it as secure against trespassers as when the person entered it.

(8) A justice of the peace may issue a warrant authorising a person to use force in the exercise of the power conferred by this article if satisfied—

- (a) that another person has prevented or is likely to prevent the exercise of that power, and
- (b) that it is reasonable to use force in the exercise of that power.

(a) O.J. No. L 26, 28.1.2012, p. 1.

(b) O.J. No. L 206, 22.7.1992, p. 7.

(9) The force that may be authorised by a warrant is limited to that which is reasonably necessary.

(10) A warrant authorising the person to use force must specify the number of occasions on which Network Rail can rely on the warrant when entering and surveying or investigating land.

(11) The number specified must be the number which the justice of the peace considers appropriate to achieve the purpose for which the entry and survey or investigation are required.

(12) Any evidence in proceedings for a warrant under this article must be given on oath.

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

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

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

but such consent must not be unreasonably withheld.

(14) If either a highway authority or a street authority which receives an application for consent fails to notify Network Rail of its decision within 28 days of receiving the application for consent—

(a) under paragraph (13)(a) in the case of a highway authority; or

(b) under paragraph (13)(b) in the case of a street authority,

that authority is deemed to have granted consent.

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

(16) Paragraphs (1) to (15) apply in relation to Crown land, however a person may only exercise the power conferred by paragraph (1) in relation to Crown land if the person has the permission of the appropriate authority.

(17) In this article, “Crown land” and “the appropriate authority” have the meaning given in section 293(a) (preliminary definitions) of the 1990 Act.

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of Acquisition

Power to acquire land

18.—(1) Network Rail may acquire compulsorily—

(a) so much of the land shown on the deposited plans within the limits of deviation and described in the book of reference as may be required for the purposes of the authorised works; and

(b) so much of the land specified in columns (1) and (2) of Schedule 2 (acquisition of land for ancillary works) (being land shown on the deposited plans and described in the book of reference) as may be required for the purpose specified in relation to that land in column (3) of that Schedule,

and may use any land so acquired for those purposes, or for any other purposes that are ancillary to its railway undertaking.

(a) As amended by paragraph 6 of Schedule 3 to the Planning and Compulsory Purchase Act 2004 (c. 5), paragraph 7(1) and (4) of Schedule 7 to the Planning (Wales) Act 2015 (anaw 4) and paragraphs 1 and 33 of Schedule 12 to the Housing and Planning Act 2016 (c. 22).

(2) This article is subject to paragraph (3) of article 21 (power to acquire new rights) and paragraph (8) of article 24 (temporary use of land for construction of works).

Application of Part 1 of the 1965 Act

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

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

(2) Part 1 the 1965 Act, as applied by paragraph (1), has effect with the following modifications.

(3) Omit section 4 (which provides a time limit for compulsory purchase of land).

(4) In section 4A(1)(b) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order), the three year period mentioned in section 4”, substitute “section 22 of the Transport and Works Act 1992 (validity of orders under section 1 or 3), the five year period mentioned in article 28 (time limit for exercise of powers of acquisition) of the Network Rail (Werrington Grade Separation) Order 2018(c)”.

(5) In section 11(1B)(d) (powers of entry) in a case where the notice to treat relates only to the acquisition of an easement or other right over land, for “3 months” substitute “1 month”.

(6) In section 11A(e) (powers of entry: further notices of entry)—

- (a) in subsection (1)(a), after “land” insert “under that provision”;
- (b) in subsection (2), after “land” insert “under that provision”.

(7) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 28 of the Network Rail (Werrington Grade Separation) Order 2018(f)”.

(8) In Schedule 2A(g) (counter-notice requiring purchase of land not in notice to treat)—

(a) for paragraphs 1(2) and 14(2) substitute—

“(2) But see article 22(3) (power to acquire subsoil or air-space only) of the Network Rail (Werrington Grade Separation) Order 2018, which excludes acquisition of subsoil or air-space only from this Schedule.”; and

(b) after paragraph 29 insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under articles 24 (temporary use of land for construction of works) and 25 (temporary use of land for maintenance of works) of the Network Rail (Werrington Grade Separation) Order 2018.”

Application of the 1981 Act

20.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

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- (a) 1981 c. 67.
 - (b) As inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).
 - (c) S.I. 2018/923.
 - (d) Subsection (1B) of section 11 was inserted by section 186(1) and (2)(b) of the Housing and Planning Act 2016 (c. 22).
 - (e) As inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).
 - (f) S.I. 2018/923.
 - (g) As inserted by section 199(1) of, and paragraphs 1 and 3 of Schedule 17 to, the Housing and Planning Act 2016 (c. 22).

(2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.

(3) In section 5 (earliest date for execution of declaration), in subsection (2), omit the words from “, and this subsection” to the end.

(4) Omit section 5A(a) (time limit for general vesting declaration).

(5) In section 5B(1) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 22 of the Transport and Works Act 1992 (validity of orders under section 1 or 3), the five year period mentioned in article 28 of the Network Rail (Werrington Grade Separation) Order 2018”.

(6) In section 6(b) (notices after execution of general vesting declaration), in subsection (1)(b), for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 14A(c) of the Transport and Works Act 1992”.

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

(8) In Schedule A1(e) (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—

“(2) But see article 22(3) (power to acquire subsoil or air-space only) of the Network Rail (Werrington Grade Separation) Order 2018, which excludes acquisition of subsoil or air-space only from this Schedule.”

(9) References to the 1965 Act are to be construed as references to that Act as applied to the acquisition of land under article 18 (power to acquire land).

Power to acquire new rights

21.—(1) Subject to paragraph (3) Network Rail may acquire compulsorily such easements or other rights over any land which it is authorised to acquire under article 18 (power to acquire land) as may be required for any purpose for which that land may be acquired under that provision, by creating them as well as by acquiring easements or other rights already in existence.

(2) Network Rail may impose restrictive covenants affecting any part of the Order land which lies beneath or adjoins, or will on completion of the authorised works lie beneath or adjoin, any bridge or viaduct or tunnel comprised in Works Nos. 2, 3, 6 and 8 as may be required for the purpose of protecting the authorised works.

(3) In the case of the Order land specified in column (1) of Schedule 8 (land in which only new rights etc. may be acquired) Network Rail may compulsorily acquire such new rights as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

(4) Subject to Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 9 (modification of compensation and compulsory purchase enactments for creation of new rights)) where Network Rail acquires a right over land under paragraphs (1) or (3) Network Rail is not required to acquire a greater interest in that land.

(5) Schedule 9 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

(6) In any case where the acquisition of new rights under paragraph (1) or (3) or the imposition of restrictive covenants under paragraph (2) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker Network Rail may, with the consent of the Secretary

(a) As inserted by section 202(2) of the Housing and Planning Act 2016 (c. 22).

(b) As amended by paragraph 52(2) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c. 11) and paragraph 7 of Schedule 15 to the Housing and Planning Act 2016 (c. 22).

(c) As inserted by S.I. 2017/16.

(d) As amended by paragraph 3 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

(e) As inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

of State, transfer the power to acquire such rights or impose such covenants to the statutory undertaker in question.

(7) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (6) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by Network Rail.

Power to acquire subsoil or air-space only

22.—(1) Network Rail may acquire compulsorily so much of, or such rights in, the subsoil of or the air-space over the land referred to in paragraph (1)(a) or (b) of article 18 (power to acquire land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where Network Rail acquires any part of, or rights in, the subsoil of or the air-space over land under paragraph (1), Network Rail is not required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil or air-space only—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) section 153(4A) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

(4) Paragraphs (2) and (3) are to be disregarded where Network Rail acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory or air-space above a house, building or manufactory.

Rights under or over streets

23.—(1) Network Rail may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised works and may use the subsoil or air-space for those purposes or any other purpose ancillary to its railway undertaking.

(2) Subject to paragraph (4), Network Rail may exercise any power conferred by paragraph (1) in relation to a street without Network Rail being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

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

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without Network Rail acquiring any part of that person's interest in the land, and who suffers loss by the exercise of that power, is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing of cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for construction of works

24.—(1) Network Rail may, in connection with the carrying out of the authorised works—

- (a) enter on and take temporary possession of—
 - (i) the land specified in columns (1) and (2) of Schedule 10 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the authorised works specified in column (4) of that Schedule; and
 - (ii) subject to paragraph (11), any other Order land in respect of which no notice of entry has been served under section 11(a) (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4(b) of the 1981 Act;
- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
- (d) construct any permanent works specified in relation to that land in column (3) of Schedule 10 or any mitigation works on that land.

(2) Not less than 28 days before entering on and taking temporary possession of land under this article Network Rail must serve notice of the intended entry on the owners and occupiers of the land.

(3) Network Rail may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in paragraph (1)(a)(i) after the end of the period of one year beginning with the date of completion of the work specified in relation to that land in column (4) of Schedule 10; or
- (b) in the case of land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of this land was taken unless Network Rail has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act.

(4) Before giving up possession of land of which temporary possession has been taken under this article, Network Rail must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but Network Rail is not be required to—

- (a) replace a building removed under this article;
- (b) restore the land on which any works have been constructed under paragraph (1)(d); or
- (c) remove any ground strengthening works which have been placed in that land to facilitate construction of the authorised works.

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

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

(a) As 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.

(b) As amended by sections 184 and 185 of, and paragraphs 1 and 2 of Schedule 18 to, the Housing and Planning Act 2016 (c. 22).

(7) Without affecting article 39 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2)(a) (further provision as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5).

(8) The powers of compulsory acquisition of land conferred by this Order do not apply in relation to the land referred to in paragraph (1)(a)(i) except that Network Rail is not precluded from—

- (a) acquiring new rights or imposing restrictive covenants over any part of that land under article 21 (power to acquire new rights); or
- (b) acquiring any part of the subsoil of or air-space over (or rights in the subsoil of or air-space over) that land under article 22 (power to acquire subsoil or air-space only).

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

(10) Section 13(b) (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of article 19 (application of Part 1 of the 1965 Act).

(11) Paragraph (1)(a)(ii) does not authorise Network Rail to take temporary possession of any land which it is not authorised to acquire under article 18 (power to acquire land) or any land specified in Schedule 8 (land in which only new rights etc. may be acquired).

Temporary use of land for maintenance of works

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

- (a) enter upon and take temporary possession of any Order land if such possession is reasonably required for the purpose of maintaining the work or any ancillary works connected with it; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

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

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article Network Rail must serve notice of the intended entry on the owners and occupiers or the land.

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

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

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

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

(a) As amended by section 4 of, and paragraph 13(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2009/1307.

(b) As amended by sections 62(3) and 139 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).

(8) Without affecting article 39 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2) (further provision as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

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

(10) Section 13 (refusal to give possession to the acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of article 19 (application of Part 1 of the 1965 Act).

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

Compensation

Disregard of certain interests and improvements

26. In assessing the compensation payable to any person on the acquisition from that person of any land under this Order, the tribunal must not take into account—

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

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

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

Extinction or suspension of private rights of way

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

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

whichever is the sooner.

(2) Subject to paragraph (6), all private rights of way over land owned by Network Rail which, being within the Order limits, is required for the purposes of this Order are extinguished on the appropriation of the land for any of those purposes by Network Rail.

(3) Subject to the provisions of this article, all private rights of way over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right or the burden of the restrictive covenant—

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

whichever is the sooner.

(4) Subject to paragraph (6), all private rights of way over land of which Network Rail takes temporary possession under this Order are suspended and unenforceable for as long as Network Rail remains in lawful possession of the land.

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

(6) This article does not apply in relation to any right of way to which section 271 or 272(a) of the 1990 Act (extinguishment of rights of statutory undertakers etc.) or paragraph 2 of Schedule 11 (provisions relating to statutory undertakers etc.) applies.

(7) Paragraphs (1), (2), (3) and (4) have effect subject to—

(a) any notice given by Network Rail before—

- (i) completion of the acquisition of;
- (ii) Network Rail's appropriation of;
- (iii) Network Rail's entry onto; or
- (iv) Network Rail's taking temporary possession of,

the land, that any or all of those paragraphs do not apply to any right of way specified in the notice; and

(b) any agreement made between Network Rail and the person in or to whom the right of way in question is vested or belongs which makes reference to this article; whether that agreement was made before or after any of the events mentioned in sub-paragraph (a), or before or after the coming into force of this Order.

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

Time limit for exercise of powers of acquisition

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

- (a) no notice to treat is to be served under Part 1 of the 1965 Act as applied to the acquisition of land by article 19 (application of part 1 of the 1965 Act); and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act **(b)** as applied by article 20 (application of the 1981 Act).

(2) The powers conferred by article 24 (temporary use of land for construction of works) cease at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents Network Rail remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

(a) Section 272 was amended by paragraphs 103(1) and (2) of Schedule 17 to the Communications Act 2003 (c. 21).
(b) 1981 c. 66.

PART 4
MISCELLANEOUS AND GENERAL

Defence to proceedings in respect of statutory nuisance

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

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by Network Rail for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to the authorised works and that the nuisance is attributable to the carrying out of the authorised works in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site), of the Control of Pollution Act 1974(c); or
 - (ii) is a consequence of the operation of the authorised works and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), do not apply where the consent relates to the use of premises by Network Rail for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works.

Power to lop trees overhanging the authorised works

30.—(1) Network Rail may fell or lop any tree or shrub near any part of the authorised works, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised works or any apparatus used on the authorised works; or
- (b) from constituting a danger to passengers or other persons using the authorised works.

(2) In exercising the powers conferred by paragraph (1), Network Rail must not cause unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from the exercise of those powers.

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

Power to operate and use railway

31.—(1) Network Rail may operate and use the railway and other authorised works as a system, or part of a system, of transport for the carriage of passengers and goods.

(a) 1990 c. 43. Section 82 was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c. 40), paragraph 6 of Schedule 17 to the Environment Act 1995 (c. 25), section 103(1), (4) and (5) of the Clean Neighbourhoods and Environment Act 2005 (c. 16) and S.I. 2015/664.

(b) There are amendments to section 79 that are not relevant to this Order.

(c) 1974 c. 40. Section 61 was amended by Schedule 7 to the Building Act 1984 (c. 55), paragraph 15(1) and (3) of Schedule 15 to the Environmental Protection Act 1990 (c. 43), Schedule 24 to the Environment Act 1995 (c. 25) and paragraph 10 of Schedule 6 to the Building (Scotland) Act 2003 (asp. 8).

(2) Nothing in this Order, or in any enactment incorporated with or applied by this Order, affects the operation of Part 1 (the provision of railway services) of the Railways Act 1993(a).

Planning permission

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

Obstruction of construction of authorised works

33. Any person who, without reasonable excuse—

- (a) obstructs any person acting under the authority of Network Rail in setting out the lines of the scheduled works or in constructing any authorised work; or
- (b) interferes with, moves or removes any apparatus belonging to any person acting under the authority of Network Rail,

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

Disclosure of confidential information

34. A person who—

- (a) enters a factory, workshop or workplace in pursuance of the provisions of article 17 (power to survey and investigate land); and
- (b) discloses to any person any information obtained as a result of that entry and relating to any manufacturing process or trade secret,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale unless the disclosure is made in the course of that person's performance of a duty in connection with the purposes for which the person was authorised to enter the land.

Statutory undertakers etc.

35. The provisions of Schedule 11 (provisions relating to statutory undertakers etc.) have effect.

Certification of plans etc.

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

Service of notices

37.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post; or
- (b) with the consent of the recipient and subject to paragraphs (6) to (8) by electronic transmission.

(a) 1993 c. 43

(b) Section 90(2A) was inserted by section 16(1) of the Transport and Works Act 1992 (c. 42).

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

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

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is taken to be fulfilled where the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission either in writing or by electronic transmission.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

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

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

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

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

Protection of interests

38. Schedule 12 (protective provisions) has effect.

No double recovery

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

Arbitration

40. Any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement,

(a) 1978 c. 30

to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

Signed by the authority of the Secretary of State

3rd August 2018

Natasha Kopala
Head of the Transport and Works Act Orders Unit
Department for Transport

SCHEDULES

SCHEDULE 1

Article 2

SCHEDULED WORKS

Work No. 1 — A railway, 2031 metres in length, being a realignment of the Stamford lines, commencing by a junction with the East Coast Main Line at a point 227 metres north-east of the junction of Enterprise Way with Bretton Way and terminating by a junction with the East Coast Main Line at a point 123 metres north-east of the bridge carrying Hurn Road above the Werrington Drain.

Work No. 1 includes an underpass under the realigned Stamford lines.

Work No. 2 — A railway, 2982 metres in length, commencing by a junction with Work No. 1 at a point 270 metres south-west of the junction of Mead Close with The Mead passing under the East Coast Main Line and terminating by a junction with the Great Northern Great Eastern railway line at a point 200 metres north-west of the junction of Redbridge with Hodgson Avenue.

Work No. 3 — A footbridge, over the East Coast Main Line and Works Nos. 1 and 2, commencing at a point 228 metres north of the junction of Coningsby Road with Stirling Way and terminating at a point 82 metres north-east of its commencement.

Work No. 3A — A temporary footbridge, over the East Coast Main Line, commencing at a point 223 metres south-west of the junction of the entrance to Rattan House with Papyrus Way and terminating at a point 41 metres south-west of its commencement.

Work No. 4 — A watercourse, being a diversion of Brook Drain, commencing at a point 220 metres north-east of the junction of Coningsby Road with Stirling Way and terminating at a point 270 metres south-west of the junction of the entrance to Rattan House with Papyrus Way.

Work No. 5 — A road, forming a junction with Hurn Road, commencing at a point 87 metres south-west of the bridge carrying the A15 over the Great Northern Great Eastern railway line and terminating at a point 359 metres south of the junctions of Gasworks Road, Waterworks Lane and Lincoln Road.

Work No. 6 — A bridge, to carry utility apparatus together with a footpath, bridleway and cycle track over the Great Northern Great Eastern Line and Work No. 2, commencing at a point 25 metres east of the bridge carrying the A15 over the Great Northern Great Eastern railway line and terminating at a point 76 metres north-west of its commencement.

Work No. 6 includes the demolition of the existing water pipe bridge.

Work No. 7A — A temporary bridge, over Marholm Brook, commencing at a point 95 metres north-west of the junction of Coningsby Road with Stirling Way and terminating at a point 10 metres north of its commencement.

Work No. 7B — A temporary bridge, over Marholm Brook, commencing at a point 132 metres north-west of the junction of Coningsby Road with Stirling Way and terminating at a point 10 metres north-east of its commencement.

Work No. 8 — A bridge, being an extension to the existing Lincoln Road Bridge, to carry that road over Work No. 2, commencing at a point 27 metres north-west of the bridge carrying Old Lincoln Road over the Great Northern Great Eastern railway line and terminating at a point 9 metres north-east of its commencement.

SCHEDULE 2

Articles 6 and 18

ACQUISITION OF LAND FOR ANCILLARY WORKS

| <i>(1)</i> <i>Area</i> | <i>(2)</i> <i>Number of land shown on the deposited plans</i> | <i>(3)</i> <i>Purposes for which land may be acquired</i> |
|---------------------------|--|--|
| City of Peterborough | 11, 15, 16, 24, 27, 31 to 34, 37, 40, 51, 51a, 52 | Worksite and access for construction of the authorised works Diversion of utility apparatus |
| | 18 to 23, 190, 191, 195, 214 to 220 | Diversion of utility apparatus |
| | 58, 59, 76, 85 | Worksite and access for construction and maintenance of the authorised works |
| | 62 | Worksite and access for construction and maintenance of the authorised works Diversion of utility apparatus |
| | 77 to 80, 105, 183, 189, 198, 209, 211 | Worksite and access for construction of the authorised works |
| | 107, 111, 113, 115a, 116 | Worksite and access for construction and maintenance of the authorised works Provision of environmental mitigation |
| | 157 | Diversion of utility apparatus Provision of a new public right of way |
| | 175 | Landscaping Provision of a new public right of way Diversion of utility apparatus |
| | 184 | Landscaping Provision of a new public right of way |
| | 223 | Provision of environmental mitigation |
| 227, 228 | Provision of an electricity supply | |

SCHEDULE 3

Article 8

STREETS SUBJECT TO ALTERATION OF LAYOUT

| <i>(1)</i> <i>Area</i> | <i>(2)</i> <i>Street subject to alteration of layout</i> | <i>(3)</i> <i>Description of alteration</i> |
|---------------------------|---|--|
| City of Peterborough | Hurn Road | Minor kerb line alterations |

SCHEDULE 4

Article 9

STREETS SUBJECT TO STREET WORKS

| <i>(1)</i> <i>Area</i> | <i>(2)</i> <i>Street subject to street works</i> |
|---------------------------|---|
| City of Peterborough | Stirling Way |
| | Hurn Road |
| | Coningsby Road |
| | Wedgewood Way |
| | Benedict Square |
| | Dukesmead |
| | A15 Werrington Parkway |
| | David's Close |
| | Lincoln Road |
| | Hodgson Avenue |
| Waterworks Lane | |

SCHEDULE 5

Article 10

STREETS TO BE STOPPED UP

PART 1

STREETS TO BE STOPPED UP (FOR WHICH A SUBSTITUTE IS TO BE PROVIDED)

| <i>(1)</i> <i>Area</i> | <i>(2)</i> <i>Street to be stopped up</i> | <i>(3)</i> <i>Extent of stopping up</i> | <i>(4)</i> <i>New street to be substituted</i> |
|---------------------------|--|--|---|
| City of Peterborough | Cock Lane Footpath | Between points P1A, P1, P2, P3 and P4 | A footpath between points P1A, P1, P5, Work No. 3 and point P4 |
| | Existing stepped footway to A15 southbound | Between points P5 and P6 | A footpath between points P5, P6, P7, P8, Work No. 6 and point P6 |

PART 2

STREETS FOR WHICH NO SUBSTITUTE IS PROVIDED

| <i>(1)</i> <i>Area</i> | <i>(2)</i> <i>Street to be stopped up</i> | <i>(3)</i> <i>Extent of stopping up</i> |
|---------------------------|--|--|
| City of Peterborough | Old Lincoln Road | Vehicular traffic between points P3 and P4 |
| | Hurn Road | Vehicular traffic between points P1 and P2 |

SCHEDULE 6

Article 11

STREETS TO BE TEMPORARILY STOPPED UP

| <i>(1)</i> <i>Area</i> | <i>(2)</i> <i>Street to be temporarily stopped up</i> | <i>(3)</i> <i>Extent of temporary stopping up</i> |
|---------------------------|--|--|
| City of Peterborough | Wedgwood Way | Within Order limits |
| | Coningsby Road | Within Order limits |
| | Benedict Square | Within Order limits |
| | Dukesmead | Within Order limits |
| | Footpath (identified on deposited plans as “path”) and cycle track to the north-east of Stirling Way | Within Order limits |
| | Footpath crossing Cock Lane footbridge | Within Order limits |
| | Hurn Road | Within Order limits and between points T4 (on sheet 04) and T3 (on sheet 05) |
| | A15 Werrington Parkway | Between points T1 (on sheet 05) and T1 (on sheet 06) |
| | Lincoln Road | Within Order limits |
| | Bridleway Pboro No. 1 ID893 | Within Order limits |
| | David’s Close | Between points T5 and T6 |
| | Gasworks Road | Within Order limits |
| | Waterworks Lane | Within Order limits |
| | Footpath and cycle track (identified on deposited plans as “path” and “cycle path” respectively) to the north-west of Hodgson Avenue | Within Order limits |
| Hodgson Avenue | Within Order limits | |

SCHEDULE 7

Article 13

ACCESS TO WORKS

| <i>(1)</i> <i>Area</i> | <i>(2)</i> <i>Description of access</i> |
|---------------------------|--|
| City of Peterborough | Widening of existing access off Hurn Road to proposed worksite |
| | New access off Hurn Road to proposed worksite |
| | New access off Lincoln Road to proposed worksite |

SCHEDULE 8

Articles 6, 21 and 24

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

| <i>(1)</i> <i>Number of land shown on the deposited plans</i> | <i>(2)</i> <i>Purpose for which rights may be acquired</i> |
|--|---|
| 25, 42, 128, 224 to 226 | Access for construction and maintenance of the authorised works |

SCHEDULE 9

Article 21

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 or imposition of a restrictive covenant 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 enter on land for the purposes 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 9 to the Network Rail (Werrington Grade Separation) Order 2018 (“the 2018 Order”)),
- (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 9 to the 2018 Order) to acquire an interest in the land, and
- (c) the acquiring authority enter 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^(a) 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 from” substitute “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for the words “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable”.

Application of Part 1 of the 1965 Act

4. Part 1 of the 1965 Act, as applied by article 19 (application of Part 1 of the 1965 Act) to the acquisition of land under article 18(1) (power to acquire land), applies to the compulsory acquisition of a right by the creation of a new right, or the imposition of a restrictive covenant, under article 21 (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 the restrictive covenant imposed or to be imposed; or
- (b) the land over which the right is, or is to be, exercisable or the restrictive covenant is, or is to be, enforceable.

(3) For section 7 (measure of compensation in the 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 or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the restrictive covenant, 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 so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

(5) Section 11^(b) (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 or restrictive covenant, as well

(a) 1973 c. 26.

(b) 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

as the notice of entry required by subsection (1) of that section (as it applies to a compulsory acquisition under article 19(1) (application of Part 1 of the 1965 Act)), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A(a) (powers of entry: further notices of entry), 11B(b) (counter-notice requiring possession to be taken on specified date), 12(c) (penalty for unauthorised entry) and 13(d) (entry on warrant in the event of obstruction) of that Act are modified accordingly.

(6) Section 20(e) (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 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 or the enforcement of the restrictive covenant in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act (as modified by article 19(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 or to enforce the restrictive covenant imposed, 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.—(1) This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory.

(2) But see article 22(3) (power to acquire subsoil or air-space only) of the Network Rail (Werrington Grade Separation) Order 2018(f), which excludes the acquisition of subsoil or air-space only from this Schedule.

2. In this Schedule, “house” includes any park of 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.

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.

- (a) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).
- (b) Section 11B was inserted by section 187(2) of the Housing and Planning Act 2016 (c. 22).
- (c) Schedule 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).
- (d) 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).
- (e) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.
- (f) 2018 S.I. 923.

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 authority must serve notice of their 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 they must do so within the decision period.

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

9. If the 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 or imposition of the restrictive covenant 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 or imposition of the restrictive covenant,
- (b) the proposed use of the right or the restrictive covenant, and
- (c) if the right is proposed to be acquired, or the restrictive covenant is proposed to be imposed, 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 or imposition of the restrictive covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

13. If the Upper Tribunal determines that the 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 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 authority withdraws the notice to treat under this paragraph they 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 10

Articles 6 and 24

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

| <i>(1)</i> Area | <i>(2)</i> Number of land shown on the deposited plans | <i>(3)</i> Purpose for which temporary possession may be taken | <i>(4)</i> Relevant part of the authorised works |
|----------------------|--|---|--|
| City of Peterborough | 4, 5, 8, 9, 42 | Worksite and access for construction of the authorised works | Work No. 1 |
| | 12 to 14, 43, 45, 56, 58a | Worksite and access for construction of the authorised works Diversion of utility apparatus | Work No. 1 |
| | 25a, 25b, 25c, 28 to 30, 60, 61 | Diversion of utility apparatus | Work No. 1 |
| | 86 | Worksite and access for construction of the authorised works Diversion of utility apparatus | Works Nos. 1, 2, 3 and 4 |
| | 63, 64, 87 | Diversion of utility apparatus | Works Nos. 1, 2 and 4 |
| | 93, 94 | Worksite and access for construction of the authorised works | Work No. 3 |
| | 95a, 96 | Demolition of existing footbridge Worksite and access for construction of the authorised works Diversion of utility apparatus Provision of a new public footpath replacing the footbridge | Works Nos. 1, 2 and 3 |
| | 101, 101a, 105a, 111a, 114, 114a, 124, | Worksite and access for construction of the authorised works | Works Nos. 1, 2 and 4 |
| | 129, 130, 136, 212 | Worksite and access for construction of the authorised works | Work No. 2 |
| | 134 | Worksite and access for construction of the authorised works | Works Nos. 2 and 5 |
| 141 | Provision of a new public right of way | Work No. 2 | |

| (1) Area | (2) Number of land shown on the deposited plans | (3) Purpose for which temporary possession may be taken | (4) Relevant part of the authorised works |
|-------------|---|---|---|
| | 151, 152, 154a, 155b | Worksite and access for construction of the authorised works | Work No. 5 |
| | 182 | Provision of a new public right of way Provision of a turning head | Work No. 2 |
| | 201 | Diversion of utility apparatus | Work No. 2 |
| | 221, 222 | Worksite and access for construction of the authorised works Diversion of utility apparatus | Work No. 2 |

SCHEDULE 11

Articles 35

PROVISIONS RELATING TO STATUTORY UNDERTAKERS ETC.

Apparatus of statutory undertakers etc. on land acquired

1.—(1) Sections 271 to 274(a) of the 1990 Act (power to extinguish rights of statutory undertakers etc. and power of statutory undertakers etc. to remove or re-site apparatus) apply in relation to any land acquired or appropriated by Network Rail under this Order subject to the following provisions of this paragraph; 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(b), which provide for the payment of compensation) have effect accordingly.

(2) In the provisions of the 1990 Act, as applied by sub-paragraph (1), references to the appropriate Minister are references to the Secretary of State.

(3) Where any apparatus of public utility undertakers or of a public communications provider is removed in pursuance of a notice or order given or made under section 271, 272 or 273 of the 1990 Act, as applied by 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,

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

(b) Section 279(3) was amended by paragraphs 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.

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 belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(5) The provisions of the 1990 Act mentioned in 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.

(6) In this paragraph—

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

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

Apparatus of statutory undertakers etc. in stopped up streets

2.—(1) Where a street is stopped up under article 10 (stopping up of streets) any statutory utility whose apparatus is under, in, upon, along or across the street 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 a street is stopped up under article 10 any statutory utility whose apparatus is under, in, upon, over, along or across the street 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 street; 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,

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) There are amendments to section 151(1) not relevant to this Order.
(b) The definition of “public utility undertakers” was amended by section 190(3) of, and part 1 of Schedule 27 to, the Water Act 1989 (c. 15) and section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c. 29).

- (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 authorised 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 statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in paragraph 1(6).

SCHEDULE 12

Article 38

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

Application

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

2. The provisions of paragraph 1 of Schedule 11 (provisions relating to statutory undertakers etc.), in so far as they relate to the removal of apparatus, do not apply in relation to apparatus to which this Part of this Schedule applies.

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

Interpretation

4. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the undertaker under the Water Industry Act 1991(b); and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4)(c) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104(d) (agreements to adopt sewer, drain or sewage disposal works, at future date) of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

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

“plans” includes sections, drawings, specifications and method statements; and

“undertaker” means—

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

Acquisition of apparatus

5. Regardless of any provision in this Order or anything shown on the deposited plans, Network Rail must not acquire any apparatus otherwise than by agreement.

Alternative apparatus

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

(a) 1989 c. 29

(b) 1991 c. 56.

(c) Section 102(4) was amended by paragraphs 7 and 90 of Schedule 7 to the Water Act 2014 (c. 21).

(d) Section 104 was amended by section 42(3) of the Flood and Water Management Act 2010 (c. 29), section 96(4) of, and part 3 of Schedule 9 to, the Water Act 2002 (c. 37) and section 11(1) and (2) of, and paragraphs 2 and 91 of Schedule 2 to, the Water Act 2014 (c. 21).

(e) 1986 c. 44.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, Network Rail requires the removal of any apparatus placed in that land, it must give to the undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed.

(3) Any alternative apparatus to be constructed in land of Network Rail under this Part of this Schedule is to be constructed in such manner and in such line or situation as may be agreed between the undertaker in question and Network Rail within 21 days of the service of a notice under sub-paragraph (2), or in default of such agreement settled by arbitration in accordance with article 40 (arbitration).

(4) In any case where alternative apparatus is to be provided or constructed under sub-paragraph (2), or if in consequence of the exercise of any of the powers conferred by this Order an undertaker reasonably needs to remove any of its apparatus, Network Rail must, subject to sub-paragraph (5), afford to the undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of Network Rail and subsequently for the maintenance of that apparatus.

(5) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of Network Rail, or Network Rail is unable to afford such facilities and rights as are mentioned in sub-paragraph (4), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the undertaker in question must, on receipt of a written notice to that effect from Network Rail, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(6) The undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 40, and after the grant to the undertaker of any such facilities and rights as are referred to in sub-paragraph (4) or (5), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by Network Rail to be removed under the provisions of this Part of this Schedule.

(7) Regardless of anything in sub-paragraph (6), if Network Rail gives notice in writing to the undertaker in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of Network Rail, that work, instead of being executed by the undertaker, must be executed by Network Rail without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the undertaker.

(8) Nothing in sub-paragraph (7) authorises Network Rail to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, Network Rail affords to an undertaker facilities and rights for the construction and maintenance in land of Network Rail of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between Network Rail and the undertaker in question or in default of agreement settled by arbitration in accordance with article 40 (arbitration).

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

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

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

Existing apparatus: protection and access

8.—(1) Not less than 28 days before starting the execution of any of the authorised works that are near to, or will or may affect, any apparatus the removal of which has not been required by Network Rail under paragraph 6(2), Network Rail must submit to the undertaker in question a plan, section and description of the works to be executed.

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

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

(4) If an undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by Network Rail, reasonably requires the removal of any apparatus and gives written notice to Network Rail of that requirement, paragraphs 1 to 7 apply as if the removal of the apparatus had been required by Network Rail under paragraph 6(2).

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

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

Apparatus in stopped up Hurn Road and Lincoln Road

9. Notwithstanding sub-paragraph (5) of article 10 (stopping up of streets), an undertaker whose apparatus is in, or accessed via, any part of Old Lincoln Road or Hurn Road that is permanently stopped up under that article has the same powers and rights in respect of such apparatus as if this Order had not been made.

Expenses

10.—(1) Subject to the following provisions of this paragraph, Network Rail must repay to an undertaker the reasonable expenses incurred by that undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus (including costs or compensation payable in connection with the acquisition of land for that purpose) which may be required in consequence of the execution of any of the authorised works.

(2) The value of any apparatus removed under the provisions of this Part of this Schedule (other than apparatus that is re-used as alternative apparatus) is to be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

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

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

and the placing of apparatus of that type or capacity or 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 in accordance with article 40 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus must not 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 must be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to an undertaker in respect of works under sub-paragraph (1) 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 undertaker 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.

Damage to apparatus: costs, losses, etc.

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

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

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

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

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

Enactments and agreements

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

PART 2
FOR THE PROTECTION OF OPERATORS OF ELECTRONIC
COMMUNICATIONS CODE NETWORKS

13.—(1) For the protection of any operator, the following provisions, unless otherwise agreed in writing between Network Rail and the operator, have effect.

(2) In this Part of this Schedule—

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7(2) of that code;

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

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act (a);

“electronic communications code network” means—

(a) so much of an electronic communications network or infrastructure system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and

(b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

“operator” means the operator of an electronic communications code network.

14.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised works or their construction, or of any subsidence resulting from any of those works—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or

(b) there is any interruption in the supply of the service provided by an operator,

Network Rail must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and must—

(i) make reasonable compensation to an operator for loss sustained by it; and

(ii) indemnify an operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, an operator by reason, or in consequence, of any such damage or interruption.

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

(3) The operator must give Network Rail reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand may be made without the consent of Network Rail which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between Network Rail and the operator under this paragraph is to be referred to and settled by arbitration under article 40 (arbitration).

15. This Part of this Schedule does not apply to—

(a) See section 106. Section 106 was amended by section 4(3) to (9) of the Digital Economy Act 2017 (c. 30).

- (a) any apparatus in respect of which the relations between Network Rail and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised works.

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

PART 3

FOR THE PROTECTION OF DRAINAGE AUTHORITIES AND THE ENVIRONMENT AGENCY

17.—(1) The following provisions of this Part of this Schedule apply for the protection of the Agency unless otherwise agreed in writing between Network Rail and the drainage authority.

(2) In this Part of this Schedule—

“the Agency” means the Environment Agency;

“a category 1 specified work” means so much of any permanent or temporary work or operation authorised by this Order (which includes, for the avoidance of doubt, any dredging and any geotechnical investigations that may be undertaken) as is likely to—

- (a) affect any drainage work which is or includes a main river or the volumetric rate of flow of water in or flowing to or from any main river;
- (b) affect the flow, purity or quality of water in any main river or other surface waters or ground water; or
- (c) affect the conservation, distribution or use of water resources;

“a category 2 specified work” means any of the following—

- (a) erecting any mill dam, weir or other like obstruction to the flow of any ordinary watercourse, or raising or otherwise altering any such obstruction;
- (b) erecting a culvert in any ordinary watercourse;
- (c) altering a culvert in a manner that would be likely to affect the flow of any ordinary watercourse; or
- (d) altering, removing or replacing a structure or feature designated by a local drainage authority under Schedule 1 (risk management: designation of features) to the Flood and Water Management Act 2010(a);

“construction” includes execution, placing, altering, replacing, relaying and removal, and “construct” and “constructed” are construed accordingly;

“the drainage authority” means—

- (a) in relation to a category 1 specified work, the Agency;
- (b) in relation to a category 2 specified work, the drainage board concerned within the meaning of section 23 (prohibition on obstructions etc., in watercourses) of the Land Drainage Act 1991(b);

“drainage work” means any watercourse and includes any land which provides or is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

(a) 2010 c. 29. Schedule 1 was amended by S.I. 2013/755.

(b) 1991 c. 59. Section 23 was amended by section 120 of, and paragraph 192 of Schedule 22 to, the Environment Act 1995 (c. 25), paragraphs 25 and 32 of Schedule 2 to the Flood and Water Management Act 2010 (c. 29) and S.I. 2013/755.

“the fishery” means any waters containing fish and the spawn, habitat or food of such fish;

“floodwater” means a significant volume of water covering land not normally covered by water in circumstances constituting a flood but does not include—

- (a) a flood from any part of a sewerage system, unless wholly or partly caused by an increase in the volume of rainwater (including snow and other precipitation) entering or otherwise affecting the system; or
- (b) a flood caused by a burst water main (within the meaning given by section 219 (general interpretation) of the Water Industry Act 1991(a));

“main river” has the same meaning as in section 221 (general interpretation) of the Water Resources Act 1991(b);

“ordinary watercourse” has the same meaning as in section 72 (interpretation) of the Land Drainage Act 1991;

“plans” includes sections, drawings, specifications and method statements;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 16 metres of a drainage work or is otherwise likely to—

- (a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
- (b) affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;
- (c) cause obstruction to the free passage of fish or damage to any fishery; or
- (d) affect the conservation, distribution or use of water resources.

18.—(1) Before beginning to construct any specified work, Network Rail must submit to the drainage authority plans of the specified work and such further particulars available to it as the drainage authority may within 28 days of the submission of the plans reasonably require.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority, or determined under article 40.

(3) Any approval of the drainage authority required under this paragraph—

- (a) must not be unreasonably withheld;
- (b) is deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans for approval and, in the case of a refusal, accompanied by a statement of the grounds of refusal; and
- (c) may be given subject to such reasonable requirements as the drainage authority may make for the protection of any drainage work or the fishery, or for the protection of water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties.

(4) The drainage authority must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

19. Without limitation on the scope of paragraph 18, the requirements which the drainage authority may make under that paragraph include conditions requiring Network Rail at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or

(a) 1991 c. 56. The definition of “water main” was amended by paragraphs 2 and 50(1) and (2)(b) of Schedule 8 to the Water Act 2003 (c. 37) and paragraphs 2 and 120(1) and (2)(e) of Schedule 7 to the Water Act 2014 (c. 21).

(b) 1991 c. 57.

- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

20.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the drainage authority under paragraph 19, must be constructed—

- (a) with all reasonable despatch in accordance with the plans approved or deemed to have been approved or settled under this Part of this Schedule; and
- (b) to the reasonable satisfaction of the drainage authority,

and an officer of the drainage authority is entitled to watch and inspect the construction of such works.

(2) Network Rail must give to the drainage authority not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is brought into use.

(3) If any part of a specified work or any protective work required by the drainage authority is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the drainage authority may by notice in writing require Network Rail at Network Rail's own expense to comply with the requirements of this Part of this Schedule or (if Network Rail so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the drainage authority reasonably requires.

(4) Subject to sub-paragraph (5) and paragraph 24, if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served upon Network Rail, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the drainage authority may execute the works specified in the notice and any expenditure incurred by it in so doing is recoverable from Network Rail.

(5) In the event of any dispute as to whether sub-paragraph (3) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the drainage authority must not except in an emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

21.—(1) Subject to sub-paragraph (5) Network Rail must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by Network Rail for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which Network Rail is liable to maintain is not maintained to the reasonable satisfaction of the drainage authority, the drainage authority may by notice in writing require Network Rail to repair and restore the work, or any part of such work, or (if Network Rail so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the drainage authority reasonably requires.

(3) Subject to paragraph 24, if, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on Network Rail, Network Rail has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the drainage authority may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from Network Rail.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the drainage authority must not except in a case of an emergency exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined.

(5) This paragraph does not apply to—

- (a) drainage works which are vested in the drainage authority, or which the drainage authority or another person is liable to maintain and is not prescribed by the powers of the Order from doing so; and
- (b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part of this Schedule.

22. Subject to paragraph 24, if by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by Network Rail to the reasonable satisfaction of the drainage authority and if Network Rail fails to do so, the drainage authority may make good the same and recover from Network Rail the expense reasonably incurred by it in so doing.

23.—(1) Network Rail must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the drainage authority may serve notice on Network Rail requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) Subject to paragraph 24, if within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to the fishery, Network Rail fails to take such steps as are described in sub-paragraph (2), the drainage authority may take those steps and may recover from Network Rail the expense reasonably incurred by it in doing so.

(4) Subject to paragraph 24, in any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the drainage authority may take such steps as are reasonable for the purpose, and may recover from Network Rail the reasonable cost of so doing provided that notice specifying those steps is served on Network Rail as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

24. Nothing in paragraphs 20(4), 21(3), 22, 23(3) and (4) authorises the drainage authority to execute works on or affecting an operational railway forming part of Network Rail's network without the prior consent in writing of Network Rail such consent not to be unreasonably withheld or delayed.

25. Network Rail must indemnify the drainage authority in respect of all costs, charges and expenses which the drainage authority may reasonably incur or have to pay or which it may sustain—

- (a) in the examination or approval of plans under this Part of this Schedule; and
- (b) in the inspection of the construction of the specified works or any protective works required by the drainage authority under this Part of this Schedule.

26.—(1) Without affecting the other provisions of this Part of this Schedule, Network Rail must indemnify the drainage authority from all claims, demands, proceedings, costs, damages, expenses or loss, which may be made or taken against, recovered from, or incurred by, the drainage authority by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any damage to the fishery;
- (c) any raising or lowering of the water table in land adjoining the authorised development or any sewers, drains and watercourses;
- (d) any flooding or increased flooding of any such lands, or
- (e) inadequate water quality in any watercourse or other surface waters or in any groundwater,

which is caused by the construction of any of the specified works or any act or omission of Network Rail, its contractors, agents or employees whilst engaged upon the work.

(2) The drainage authority must give to Network Rail reasonable notice of any such claim or demand and no settlement or compromise may be made without the agreement of Network Rail, but such agreement must not be unreasonably withheld or delayed.

27. The fact that any work or thing has been executed or done by Network Rail in accordance with a plan approved or deemed to be approved by the drainage authority, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve Network Rail from any liability under the provisions of this Part of this Schedule.

28. If by reason of construction of the specified work the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, Network Rail must as soon as reasonably practicable provide such alternative means of access as will (so far as reasonably practicable) allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction as soon as reasonably practicable.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Network Rail Infrastructure Limited to construct, operate and maintain works in the City of Peterborough for a grade separated junction in the form of a dive under beneath the East Coast Main Line (ECML) at Werrington. The construction of the dive under requires works to move the Stamford Lines westwards to allow space for tracks to pass beneath the ECML, diversion of Brook Drain and related watercourses, a replacement footbridge at Cock Lane, a widened bridge at Lincoln Road, a further bridge to carry utilities and a footpath, bridleway and cycle track over the new railway and a new road to provide access for properties on Hurn Road. Temporary bridges over the Marholm Brook and the railway will allow access during construction to the main construction compounds. The Order also authorises further ancillary works including utilities diversions. The Order authorises the acquisition of land and rights in land and the use of land for this purpose.

Copies of the deposited plans, the deposited sections and the book of reference referred to in the Order may be inspected, on request, at the offices of the Network Rail Infrastructure Limited at Network Rail National Records Centre, Unit 5, Audux Road, Clifton Moor, York, YO30 4US.

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