
STATUTORY INSTRUMENTS

2020 No. 511

The West Midlands Rail Freight Interchange Order 2020

PART 5

POWERS OF ACQUISITION

Guarantees in respect of payment of compensation

23.—(1) The undertaker must not exercise a power conferred by articles 24 (compulsory acquisition of land) to 27 (power to override easements and other rights) or 32 (statutory undertakers and operators of the electronic communications code network) to 35 (temporary use of land for maintaining the authorised development) unless a guarantee or alternative form of security in respect of the [^{F1}liabilities of the undertaker] to pay compensation under the power being exercised is first in place.

(2) The form of guarantee or security referred to in paragraph (1), and the amount guaranteed or secured, must be approved by the local planning authority; but such approval must not be unreasonably withheld.

(3) The undertaker must provide the local planning authority with such information as the local planning authority may reasonably require relating to the interests in the land affected by the exercise of the powers conferred by articles 24 to 27 or 32 to 35 for the local planning authority to be able to determine the adequacy of the proposed guarantee or security including—

- (a) the interests affected; and
- (b) the undertaker's assessment, and the basis of the assessment, of the level of compensation.

(4) A guarantee or other security given in accordance with this article that guarantees or secures the undertaker's payment of compensation under this Part shall be treated as enforceable against the guarantor or provider of security by any person to whom such compensation is properly payable.

(5) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years from the date on which the relevant power is exercised.

Textual Amendments

F1 Words in art. 23(1) substituted (21.10.2020) by [The West Midlands Rail Freight Interchange \(Correction\) Order 2020 \(S.I. 2020/1163\)](#), arts. 1, 2(6)

Compulsory acquisition of land

24.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate, or is incidental to, it as described in the book of reference and shown on the land plans.

(2) From the day on which a compulsory acquisition notice under section 134^{M1} (notice of authorisation of compulsory acquisition) of the 2008 Act is served or the day on which the Order

land, or any part of it, is vested in the undertaker, whichever is the later, all rights, trusts and incidents to which that land or that part of it which is vested (as the case may be) was previously subject are discharged or suspended, so far as their continuance would be inconsistent with the exercise of the powers under this Order.

(3) 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.

(4) This article is subject to—

- (a) article 25 (compulsory acquisition of rights);
- (b) article 26 (private rights);
- (c) article 29 (time limit for exercise of authority to acquire land and rights compulsorily); and
- (d) article 34(9) (temporary use of land for carrying out the authorised development).

Marginal Citations

M1 Section 134 was amended by section 142(1) to (4) and section 237 of, and Part 21 of Schedule 25 to, the [Localism Act 2011 \(c. 20\)](#) and [S.I. 2017/16](#).

Compulsory acquisition of rights

25.—(1) The undertaker may acquire compulsorily the existing rights and create and acquire compulsorily the new rights listed in Schedule 11 (land in which new rights may be created) and described in the book of reference and shown on the land plans.

(2) From the date on which a compulsory acquisition notice is served pursuant to section 134 (notice of authorisation of compulsory acquisition) of the 2008 Act or the date on which any new right is vested in the undertaker, whichever is the later, all rights, trusts and incidents to which the land over which any new right is, or rights are, acquired was previously subject are discharged, so far as their continuance would be inconsistent with the exercise of that new right.

(3) Subject to section 8^{M2} (other provisions as to divided land) of, and Schedule 2A^{M3} (counter-notice requiring purchase of land not in notice to treat) to, the 1965 Act (as substituted by paragraph 5(8) of Schedule 12 (modifications of compensation and compulsory purchase enactments for creation of new rights), where the undertaker acquires an existing right over land under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 12 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.

(5) In any case where the acquisition of new rights under paragraph (1) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question.

(6) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (5) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

(7) 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.

Marginal Citations

- M2** Section 8 was amended by paragraphs 1 and 2 of Part 1 of Schedule 17 to the [Housing and Planning Act 2016 \(c. 22\)](#) and [S.I. 2009/1307](#).
- M3** [Schedule 2A](#) was inserted by paragraphs 1 and 3 of Schedule 17 to the [Housing and Planning Act 2016 \(c. 22\)](#).

Private rights

26.—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1)^{M4} (power of entry) of the 1965 Act,

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right—

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

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights over land within the limits of land which may be acquired shown on the land plans are extinguished on the appropriation of the land by the undertaker.

(4) Subject to the provisions of this article, all private rights over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation in accordance with the terms of section 152^{M5} (compensation in case where no right to claim in nuisance) of the 2008 Act 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 to which section 138^{M6} (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 32 (statutory undertakers and operators of the electronic communications code network) applies.

(7) Paragraphs (1) to (4) have effect subject to—

- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land or the acquisition of rights over or affecting the land;
 - (ii) the undertaker's appropriation of the land;
 - (iii) the undertaker's entry onto it; or
 - (iv) the undertaker's taking temporary possession of it,

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

- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.
- (8) If any agreement referred to in paragraph (7)(b)—
 - (a) is made with a person in or to whom the right is vested or belongs; and
 - (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) References in this article to private rights over land include references to any trusts or incidents to which the land is subject.

Marginal Citations

- M4** Section 11(1) was amended by section 186(1) and (2), section 187(1) and (2) and section 188 of the [Housing and Planning Act 2016 \(c. 22\)](#) and section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No 1).
- M5** Section 152 was amended by [S.I. 2009/1307](#).
- M6** Section 138 was amended by section 23(4) of the [Growth and Industry Act 2013 \(c. 27\)](#) and [S.I. 2017/1285](#).

Power to override easements and other rights

27.—(1) Any authorised activity undertaken by the undertaker which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title under it) is authorised by this Order if it is done in accordance with the terms of this Order, regardless of whether it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to the use of the land arising by virtue of a contract.

(2) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.

(3) Nothing in this article authorises interference with any right of way or right of laying down, erecting, continuing or maintaining apparatus on, under or over land which is a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking, or a right conferred by or in accordance with the electronic communications code on the operator of an electronic communications code network.

(4) Where any interest or right to which this article applies is interfered with or any restriction breached by any authorised activity in accordance with the terms of this article the interest or right is extinguished, abrogated or discharged at the time that the interference or breach in respect of the authorised activity in question commences.

(5) In respect of any interference, breach, extinguishment, abrogation or discharge under this article, compensation—

- (a) is payable under section 7 (measure of compensation in case of severance) or section 10^{M7} (further provisions as to compensation for injurious affection) of the 1965 Act; and
- (b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections in respect of injurious affection where—
 - (i) the compensation is to be estimated in connection with a purchase under that Act; or

(ii) the injury arises from the execution of works on or use of land acquired under that Act.

(6) Nothing in this article is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1) of this article.

(7) Nothing in this article is to be construed as restricting the entitlement of any person to compensation.

(8) Where a person deriving title under the undertaker by whom the land in question was acquired or appropriated—

- (a) is liable to pay compensation; and
- (b) fails to discharge that liability,

the liability is enforceable against the undertaker.

(9) For the purposes of this article—

“authorised activity” means—

- (a) the erection, construction, carrying out or maintenance of any building or works on land;
- (b) the erection, construction or maintenance or anything in, on, over or under land; or
- (c) the use of any land; and

“statutory undertakers” does not include operators of the electronic communications code network.

Marginal Citations

M7 Section 10 was amended by S.I. 2009/1307.

Compulsory acquisition of land – incorporation of the mineral code

28.—(1) Subject to paragraph (2), Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981^{M8} are incorporated in this Order subject to the following modifications—

- (a) for “the acquiring authority” substitute “ the undertaker ”;
- (b) for the “undertaking” substitute “ authorised development ”; and
- (c) paragraph 8(3) is not incorporated.

(2) Paragraph (1) does not apply to the plots shown coloured pink, hatched pink or coloured orange on the land plans.

Marginal Citations

M8 1981 c. 67.

Time limit for exercise of authority to acquire land and rights compulsorily

29.—(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; and
- (b) no declaration is to be executed under section 4^{M9} (execution of declaration) of the 1981 Act as applied by article 31 (application of the 1981 Act).

(2) The authority conferred by article 34 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of the land after the end of that period, if the land was entered and possession taken before the end of that period.

Marginal Citations

M9 Section 4 was amended by sections 184, 185 and 199(2) of, and paragraphs 1 and 2 of Part 1 of Schedule 13 to, the [Housing and Planning Act 2016 \(c. 22\)](#).

Modification of Part 1 of the 1965 Act

30.—(1) Part 1 of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act is modified as follows.

(2) In section 4A(1) ^{M10} (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 118 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 29 (time limit for exercise of authority to acquire land and rights compulsorily) of the West Midlands Rail Freight Interchange Order 2020 ^{M11} ”.

(3) 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 “[^{F2}article 29 (time limit for exercise of authority to acquire land and rights compulsorily)] of the West Midlands Rail Freight Interchange Order 2020”.

(4) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat) at the end insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 34 (temporary use of land for carrying out the authorised development) or 35 (temporary use of land for maintaining the authorised development) of West Midlands Rail Freight Interchange Order 2020.”

Textual Amendments

F2 Words in art. 30(3) substituted (21.10.2020) by [The West Midlands Rail Freight Interchange \(Correction\) Order 2020 \(S.I. 2020/1163\)](#), arts. 1, 2(7)

Marginal Citations

M10 Section 4A(1) was inserted by section 202(1) of the [Housing and Planning Act 2016 \(c. 22\)](#).

M11 [S.I. 2020/511](#).

Application of the 1981 Act

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

- (2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.
- (3) In section 1 (application of Act), for subsection 2 substitute—
- “(2) This section applies to any Minister, any local or other public authority or any body or person authorised to acquire land by means of a compulsory purchase order.”
- (4) In section 5(2)^{M12} (earliest date for execution of declaration) omit the words from “, and this subsection” to the end.
- (5) Omit section 5A^{M13} (time limit for general vesting declaration).
- (6) In section 5B(1)^{M14} (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 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 29 (time limit for exercise of authority to acquire land and rights compulsorily) of the West Midlands Rail Freight Interchange Order 2020 ”.
- (7) In section 6(1)(b)^{M15} (notices after execution of declaration) for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “ section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008 ”.
- (8) In section 7(1)(a)^{M16} (constructive notice to treat), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.
- (9) In Schedule A1^{M17} (counter-notice requiring purchase of land not in general vesting declaration), omit paragraph 1(2).
- (10) References to the 1965 Act in the 1981 Act are to be construed as references to that Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act as modified by [F3 article 30 (modification of Part 1 of the 1965 Act)] to the compulsory acquisition of land and rights under this Order.

Textual Amendments

- F3** Words in [art. 31\(10\)](#) substituted (21.10.2020) by [The West Midlands Rail Freight Interchange \(Correction\) Order 2020 \(S.I. 2020/1163\)](#), arts. 1, **2(8)**

Marginal Citations

- M12** Section 5 was amended by section 183 of, and Schedule 15 to, the [Housing and Planning Act 2016 \(c. 22\)](#).
- M13** Section 5A was inserted by section 182(2) of the [Housing and Planning Act 2016 \(c. 22\)](#).
- M14** Section 5B(1) was inserted by section 202(2) of the [Housing and Planning Act 2016 \(c. 22\)](#).
- M15** Section 6 was amended by section 183 of, and paragraphs 4 and 7 of Schedule 15 to, the [Housing and Planning Act 2016 \(c. 22\)](#) and section 4 of, and paragraph 52(2) of Schedule 2 to, the [Planning \(Consequential Provisions\) Act 1990 \(c. 11\)](#).
- M16** Section 7 was amended by section 199(2) of, and paragraphs 1 and 3 of Part 1 of Schedule 18 to, the [Housing and Planning Act 2016 \(c. 22\)](#).
- M17** Schedule A1 was inserted by paragraph 6 of Part 1 of Schedule 18 to the [Housing and Planning Act 2016 \(c. 22\)](#).

Statutory undertakers and operators of the electronic communications code network

- 32.** The undertaker may, subject to Schedule 13 (protective provisions)—
- (a) extinguish the rights of statutory undertakers and operators of the electronic communications code network within the Order limits; and

- (b) replace, reposition, renew, alter and supplement the apparatus belonging to statutory undertakers and operators of the electronic communications code network within the Order limits.

Rights under or over streets

33.—(1) Subject to paragraph (6) the undertaker may enter on 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 development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without 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—

- (a) is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land; and
- (b) suffers loss as a result,

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 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.

(6) Paragraph (1) does not apply to the strategic road network.

Temporary use of land for carrying out the authorised development

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

(a) enter into 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 part of the authorised development specified in column (4) of that Schedule; and
- (ii) any of the Order land in respect of which no notice of entry has been served under section 11^{M18} (powers of entry) of the 1965 Act or no declaration has been made under section 4 (execution of declaration) of the 1981 Act;

(b) remove any buildings and vegetation from that land; and

(c) construct and use temporary works (including the provision of means of access) and buildings on that land.

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

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

- (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 part of the authorised development 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 a period of 1 year beginning with the date of completion of the work for which temporary possession of that land was taken unless the undertaker 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 in relation to that land or has otherwise acquired the land subject to temporary possession.
- (4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must—
- (a) remove all temporary works (including temporary accesses to the public highway);
 - (b) restore the land affected by temporary works to the reasonable satisfaction of the owners of the land;
 - (c) reinstate the land affected by any temporary highway access to the reasonable satisfaction of the relevant highway authority,

save that the undertaker is not required to replace a building removed under this article.

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

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

(7) 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 carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(8) Unless provided for in the book of reference and article 24 (compulsory acquisition of land) the undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1).

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

(10) Section 13 (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 section 125 ^{M19} (application of compulsory acquisition provisions) of the 2008 Act.

Marginal Citations

- M18** Section 11 was amended by section 186(1) and (2), section 187(1) and (2) and section 188 of, and paragraphs 1 and 2 of Schedule 16 to, and paragraph 6 of Schedule 14 to, the [Housing and Planning Act 2016 \(c. 22\)](#), [section 14](#) of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous provisions) Measure 2006 (2006 No 1) and [S.I. 2009/1307](#).
- M19** Section 125 was amended by paragraph 17 of Schedule 16 to the [Housing and Planning Act 2016 \(c. 22\)](#).

Temporary use of land for maintaining the authorised development

35.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development;
 - (b) enter on any land within the Order limits for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and
 - (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for those purposes provided that any temporary access to the public highway shall be subject to the approval of the relevant highway authority.
- (2) Paragraph (1) does not authorise the undertaker 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 on and taking temporary possession of land under this article, the undertaker must serve notice of the intended entry on the owners and occupiers of the land.
- (4) The undertaker may remain in possession of land under this article only for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development 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, the undertaker must—
 - (a) remove all temporary works (including temporary access to the public highway);
 - (b) restore the land affected by temporary works to the reasonable satisfaction of the owners of the land;
 - (c) reinstate the land affected by any temporary highway access to the reasonable satisfaction of the relevant highway authority.
- (6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.
- (7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, must be determined under Part 1 of the 1961 Act.
- (8) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).
- (9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.
- (10) Section 13^{M20} (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 section 125 (application of compulsory acquisition provisions) of the 2008 Act.
- (11) In this article, “maintenance period”, in relation to any part of the authorised development, means the period of 5 years beginning with the date on which that part of the authorised development is first brought into use.

Marginal Citations

M20 1965 c. 56. Section 13 was amended by section 139(4) to (9) and section 62(3) of, paragraphs 27 and 28(1) to (3) of Schedule 13 to, and Part 13 of Schedule 23 to, the [Tribunal, Courts and Enforcement Act 2007](#) (c. 15).

Apparatus and rights of statutory undertakers in stopped up streets

36.—(1) Where a street is stopped up under article 10 (permanent stopping up of streets) any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, 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, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the statutory 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 such position as described in sub-paragraph (a).

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

- (a) the execution of 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 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 that new apparatus involves additional costs which would not have been incurred if the apparatus had been of the same type, capacity or laid at the same depth as the existing apparatus, then the amount payable to the statutory utility is to be reduced by a sum equivalent to those additional costs.

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

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

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

of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

(7) Paragraphs (3) to (6) do not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works must 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 must be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

No double recovery

37. 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.

Changes to legislation:

There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020, PART 5.