

SCHEDULES

SCHEDULE 11

PROTECTIVE PROVISIONS

PART 6

FOR THE PROTECTION OF RAILWAY INTERESTS

69.—(1) The undertaker must not exercise the powers conferred by—

- (a) article 5 (development consent etc. granted by the Order);
- (b) article 6 (maintenance of authorised development);
- (c) article 24 (discharge of water);
- (d) article 26 (authority to survey and investigate the land);
- (e) article 27 (compulsory acquisition of land);
- (f) article 30 (compulsory acquisition of rights and imposition of restrictive covenants);
- (g) article 31 (private rights over land);
- (h) article 38 (acquisition of subsoil or airspace only);
- (i) article 40 (temporary use of land for carrying out the authorised development);
- (j) article 41 (temporary use of land for maintaining the authorised development);
- (k) article 42 (statutory undertakers);
- (l) article 46 (felling or lopping of trees and removal of hedgerows);
- (m) article 47 (trees subject to tree preservation orders);
- (n) section 11(3)(1) (power of entry) of the 1965 Act;
- (o) section 203 (power to override easements and rights) of the Housing and Planning Act 2016(2);
- (p) section 172(3) (right to enter and survey land) of the Housing and Planning Act 2016;
- (q) the Neighbourhood Planning Act 2017, in respect of the temporary possession of land,

in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

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

(1) Section 11(3) was amended by paragraph 6 of Schedule 14 to the Housing and Planning Act 2016 (c. 22) and by S.I. 2009/1307.
(2) 2016 c. 22. Section 203 was amended by section 37(2) of the Neighbourhood Planning Act 2017 (c. 20) and paragraph 5(2) of Schedule 20 to the Environment Act 2021 (c. 30).
(3) 2016 c. 22. Section 172 was amended by section 26(8)(b) of the Neighbourhood Planning Act 2017.

Status: This is the original version (as it was originally made).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

(3) The undertaker must not exercise the powers conferred by sections 27(4) (extinguishment of rights of statutory undertakers: preliminary notices) or 272(5) (extinguishment of rights of telecommunications code system operators: preliminary notices) of the 1990 Act, article 42 (statutory undertakers), or article 31 (private rights over land), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property, except with the consent of Network Rail.

(5) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.

(6) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions, but it is not unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion).

(7) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.

(4) Section 272 was amended by paragraph 103 of Schedule 17 to the Communications Act 2003 (c. 21).

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