
STATUTORY INSTRUMENTS

2013 No. 1933

TRANSPORT AND WORKS, ENGLAND
TRANSPORT, ENGLAND

The Leeds Railway Station (Southern Entrance) Order 2013

Made - - - - *1st August 2013*

Coming into force - - *22nd August 2013*

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⁽¹⁾ for an Order under sections 1, 3 and 5 of the Transport and Works Act 1992⁽²⁾ (“the 1992 Act”).

The Secretary of State caused an inquiry to be held for the purposes of the application pursuant to 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The Secretary of State, having considered the objections made and not withdrawn and the report of the person who held the inquiry, has determined to make an Order giving effect to the proposals comprised in the application with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 30th July 2013.

The Secretary of State, in exercise of the powers conferred by sections 1, 3 and 5 of, and paragraphs 1 to 4, 7, 8, 10, 11, 15 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 Leeds Railway Station (Southern Entrance) Order 2013 and comes into force on 22nd August 2013.

(1) [S.I. 2006/1466](#).

(2) [1992 c. 42](#). Relevant amending instruments are [S.I. 1995/1541](#), [S.I. 1998/2226](#), [S.I. 2000/3199](#) and [S.I. 2006/958](#).

Interpretation

2.—(1) In this Order—

- “the 1961 Act” means the Land Compensation Act 1961**(3)**;
- “the 1965 Act” means the Compulsory Purchase Act 1965**(4)**;
- “the 1980 Act” means the Highways Act 1980**(5)**;
- “the 1981 Act” means the Acquisition of Land Act 1981**(6)**;
- “the 1984 Act” means the Road Traffic Regulation Act 1984**(7)**;
- “the 1990 Act” means the Town and Country Planning Act 1990**(8)**;
- “the 1991 Act” means the New Roads and Street Works Act 1991**(9)**;
- “the 1993 Act” means the Railways Act 1993**(10)**;
- “the 2003 Act” means the Communications Act 2003**(11)**;
- “the Aire and Calder Navigation” means that part of the River Aire comprised in the waterway specified in Part 1 of Schedule 12 to the Transport Act 1968**(12)**;
- “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;
- “carriageway” has the same meaning as in the 1980 Act;
- “the deposited plans” means the plans certified by the Secretary of State as the deposited plans for the purposes of this Order;
- “the deposited sections” means the sections certified by the Secretary of State as the deposited sections for the purposes of this Order;
- “footpath” has the same meaning as in the 1980 Act;
- “highway” and “highway authority” have the same meaning as in the 1980 Act;
- “the limits of deviation” means the limits of deviation for the scheduled works shown on the deposited plans;
- “the limits of land to be temporarily used” means the land so shown and described on the deposited plans;
- “the limit of land to be acquired or used” means the land so shown and described on the deposited plans;
- “the limits of land to be temporarily used for the oversailing of equipment” means the land so shown on and described on the deposited plans;
- “maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace, and “maintenance” is to be construed accordingly;

(3) 1961 c. 33.
(4) 1965 c. 56.
(5) 1980 c. 66.
(6) 1981 c. 67.
(7) 1984 c. 27.
(8) 1990 c. 8.
(9) 1991 c. 22.
(10) 1993 c. 43.
(11) 2003 c. 21.
(12) 1968 c. 73.

“mooring” means any buoy, pile, pontoon chain or other apparatus used for the mooring of vessels;

“Network Rail” means Network Rail Infrastructure Limited (Company No. 02904587) whose registered office is at Kings Place, 90 York Way, London N1 9AG;

“the promoter” means West Yorkshire Passenger Transport Executive and Network Rail together, or either of them;

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

“owner”, in relation to land, has the same meaning as in the 1981 Act;

“oversailing of equipment” means the construction and operation of craneage required in connection with the construction of the authorised works;

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

“public utility undertakers” has the same meaning as in the 1980 Act;

“the relevant part of the waterway” means that part of the Aire and Calder Navigation as is within the limits of deviation and the limits of land to be temporarily used;

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

“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 traffic regulation and rights of way plan” means the plan certified by the Secretary of State as the traffic regulation and rights of way plan for the purposes of this Order;

“the tribunal” means the Upper Tribunal;

“the Trust” means the Canal & River Trust;

“vessel” includes any part of a vessel; and

“watercourse” means the relevant part of the waterway and any drains, canals, cuts, culverts, 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.

(3) All distances, directions and lengths stated in the description of the scheduled works or in any description of powers or lands are approximate, and distances between points on a scheduled work are taken to be measured along the scheduled work.

Application of the 1991 Act

3.—(1) Works executed under this Order in relation to a highway which is, or forms part of a carriageway are to be treated for the purposes of Part 3 of the 1991 Act (street works in England and Wales) 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 of the 1980 Act (dual carriageways and roundabouts).

(2) The following provisions of the 1991 Act do not apply in relation to any works executed under the powers conferred by this Order—

section 56 (directions as to timing);
 section 56A (power to give directions as to placing of apparatus);
 section 58 (restrictions following substantial road works);
 section 73A (power to require undertaker to re-surface street);
 section 73B (power to specify timing, etc., of re-surfacing);
 section 73C (materials, workmanship and standard of re-surfacing);
 section 78A (contributions to costs of re-surfacing by undertaker); and
 Schedule 3A (restriction on works following substantial street works).

(3) The provisions of the 1991 Act mentioned in paragraph (4) which, together with other provisions of that Act, apply in relation to the execution 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 stopping up, alteration or diversion of a street of a temporary nature by the promoter under the powers conferred by this Order whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

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

section 54 (advance notice of certain works);
 section 55 (notice of starting date of works);
 section 57 (notice of emergency works);
 section 59 (general duty of street authority to co-ordinate works);
 section 60 (general duty of undertaker to co-operate);
 section 68 (facilities to be afforded to street authority);
 section 69 (works likely to affect other apparatus in the street);
 section 75 (inspection fees);
 section 76 (liability for cost of temporary traffic regulation);
 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.

(5) Sections 54 and 55 of the 1991 Act as applied by paragraph (3) have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

(6) Nothing in article 11 (construction and maintenance of new or altered streets)—

- (a) prejudices the operation of section 87 of the 1991 Act (prospectively maintainable highways) and the promoter is not by reason of any duty under this Order to maintain a street to be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; and
- (b) has effect in relation to street works with regard to which the provisions of Part 3 of the 1991 Act apply.

PART 2

WORKS PROVISIONS

Principal Powers

Power to construct and maintain works

4.—(1) The promoter may construct and maintain the scheduled works.

(2) Subject to article 5 (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 deposited sections.

(3) Subject to paragraph (5), the promoter 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) construct and maintain such offices and other buildings, yards, machinery, plant, apparatus and other works and conveniences as the promoter thinks fit;
- (b) make, provide and maintain all such approaches, lifts, stairs, escalators, ramps, passages, means of access, shafts and stagings as the promoter thinks fit;
- (c) make and maintain junctions and communications (including the provision of steps or ramps for the use of persons on foot) with any highway or access way intersected or interfered with by, or contiguous to, any of those works, and widen or alter any highway or access way for the purpose of connecting it with any of those works or another highway, or of crossing under or over the highway or access way;
- (d) construct, provide and maintain all such embankments, aprons, abutments, retaining walls, wing walls, culverts and other works as may be necessary or convenient;
- (e) alter or remove any structure erected upon any highway or adjoining land;
- (f) alter the position of apparatus, including mains, sewers, drains, pipes, cables and street furniture;
- (g) carry out and maintain landscaping and other permanent mitigation works to mitigate any adverse effects of the construction, maintenance or operation of the scheduled works including the execution of works to alter the layout of streets; and
- (h) carry out and maintain works for the benefit or protection of premises affected by the scheduled works.

(4) Subject to paragraph (5), the promoter may carry out and maintain 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 scheduled 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—

- (a) on land specified in columns (1) and (2) of Schedule 2 (acquisition of certain lands for ancillary works) for the purpose specified in relation to that land in column (3) of that Schedule; and
- (b) on 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.

(6) In constructing the scheduled works, the promoter may, regardless of any enactment that provides otherwise, do either or both of the following—

- (a) use such parts of the original viaduct as it may require for the purposes of the authorised works; and
 - (b) take down and remove such parts of the original viaduct as the promoter does not require.
- (7) The following enactments do not apply to anything done under this Order—
- (a) section 109 of the Water Resources Act 1991⁽¹³⁾;
 - (b) section 23 of the Land Drainage Act 1991⁽¹⁴⁾;
 - (c) Part 4 of the Eels (England and Wales) Regulations 2009⁽¹⁵⁾; and
 - (d) any byelaws made under the above enactments.
- (8) Paragraph (7) is subject to Schedule 16 (for the protection of the Environment Agency).
- (9) In this article “the original viaduct” means that part of the existing viaduct at Leeds railway station carrying the railways of Network Rail into the station.

Power to deviate

- 5.—(1) In constructing or maintaining any of the scheduled works, the promoter may subject to paragraph (2)—
- (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 deposited sections—
 - (i) to any extent not exceeding 2 metres upwards; or
 - (ii) to any extent not exceeding 2 metres downwards.
- (2) Notwithstanding paragraph (1)(b), the promoter may deviate vertically from the levels shown on the deposited sections to any extent downwards in respect of the vertical piles supporting Work No. 1.

Streets

Power to execute street works

- 6.—(1) The promoter may, for the purposes of the authorised works, enter upon so much of any of the streets specified in Schedule 3 (streets subject to street works) as is within the Order limits and may—
- (a) break up or open the street, or any sewer, drain or tunnel under it, or tunnel or bore under the street;
 - (b) place and maintain apparatus in the street or change its position; and
 - (c) execute any works required for or incidental to any works referred to in sub-paragraphs (a) and (b).
- (2) This article is subject to paragraph 3 of Schedule 12 (provisions relating to statutory undertakers etc.).
- (3) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

⁽¹³⁾ 1991 c. 57.

⁽¹⁴⁾ 1991 c. 59.

⁽¹⁵⁾ S.I. 2009/3344.

Power to alter layout etc. of streets

7.—(1) The promoter may alter the layout of, and carry out other ancillary works in the street specified in column (1) of Schedule 4 (street subject to alteration of layout) in the manner specified in relation to that street in column (2) of that Schedule.

(2) Without limiting the scope of the specific powers conferred by article 4 (power to construct and maintain works) or paragraph (1) but subject to paragraph (3) the promoter may, for the purpose of constructing, maintaining or using the authorised works, alter the layout of the street specified in column (1) of Schedule 4 and the layout of any street having a junction with such a street; and, without limiting the scope of that power, the promoter may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footway, or verge within the street;
- (b) alter the level or increase the width of any such kerb, footway, or verge;
- (c) reduce the width of the carriageway of the street by forming a reserved area in the street or by carrying out other works for the purpose of regulating the passage of vehicles along the street;
- (d) carry out works for the provision, alteration or removal of parking places and loading bays;
- (e) carry out traffic calming works which are of a description prescribed in regulation 3 of the Highways (Traffic Calming) Regulations 1999⁽¹⁶⁾ and which are carried out in compliance with those Regulations; and
- (f) carry out works to the carriageway of the street for the purpose of deterring or preventing vehicles from passing along the street.

(3) The powers in paragraph (2) must not be exercised without the consent of the street authority, but such consent is not to be unreasonably withheld.

Stopping up of streets

8.—(1) Subject to the provisions of this article, the promoter may, in connection with the construction of the authorised works, stop up the street specified in columns (1) and (2) of Schedule 5 (street to be stopped up for which a substitute to be provided) to the extent specified, in column (3) of that Schedule.

(2) The street specified in columns (1) and (2) of Schedule 5 must not be wholly or partly stopped up under this article unless—

- (a) the new street to be substituted for it, which is specified in column (4) of that Schedule, has been 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 then maintained by the promoter, 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) 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.

(4) This article is subject to paragraph 2 of Schedule 12 (provisions relating to statutory undertakers etc.).

⁽¹⁶⁾ S.I. 1999/1026.

Temporary stopping up of streets

9.—(1) The promoter, 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 (2), prevent all persons from passing along the street.

(2) The promoter must provide reasonable access for pedestrians going to or from premises abutting a street affected by the exercise of the powers conferred by this article if there would otherwise be no such access.

(3) Without limitation on the scope of paragraph (1), the promoter may exercise the powers conferred by this article in relation to the streets specified in columns (1) and (2) of Schedule 6 (streets to be temporarily stopped up) to the extent specified in column (3) of that Schedule.

(4) The promoter must not exercise the powers conferred by this article—

- (a) in relation to any street specified as mentioned in paragraph (3) 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.

(5) 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.

(6) Any street subject to the exercise of the powers conferred by paragraph (1) may be used as a temporary working site for the purposes of the construction of the authorised works and the promoter may erect on any street such temporary works including temporary buildings and storage facilities as the promoter considers convenient and necessary.

(7) In Schedule 6—

“Granary Wharf Piazza” means the lands numbered 105, 106, 109, 110, 111, 112, 117 and 118 on the deposited plans.

Access to works

10. The promoter 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) at or about the points marked “A” on the deposited plans; and
- (b) form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the promoter reasonably requires for the purposes of the authorised works, as may be approved by the highway authority, but such approval must not be unreasonably withheld.

Construction and maintenance of new or altered streets

11.—(1) Any street (other than any part of Work No. 1 and 1A) to be constructed under this Order must be completed to the reasonable satisfaction of the highway authority and must be maintained by and at the expense of the promoter 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, be maintained by and at the expense of the promoter 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) In any action against the promoter in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (regardless of any other defence or the application of the law relating to contributory negligence) to prove that the promoter 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.

(4) For the purposes of a defence under paragraph (3), 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 the promoter 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;
- (e) where the promoter 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 the promoter 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 the promoter 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.

Agreements with street authorities

12.—(1) A street authority and the promoter 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 maintenance of the structure of any bridge or tunnel carrying a street over or under a railway;
- (c) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
- (d) the execution in the street of any of the works referred to in article 6(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.

Supplemental powers

Discharge of water

13.—(1) The promoter 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 exercise of the powers conferred by paragraph (1) to connect to or use a public sewer or drain is to be determined as if it were a dispute under section 106 of the Water Industry Act 1991⁽¹⁷⁾.

(3) The promoter 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) The promoter 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) The promoter 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) The promoter 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 2010⁽¹⁸⁾.

(8) If a person who receives an application for consent or approval fails to notify the promoter 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 the Environment Agency, a local authority or a sewerage undertaker; and

(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991⁽¹⁹⁾ have the same meaning as in that Act.

Protective works to buildings, roads and apparatus of a statutory undertaker

14.—(1) Subject to the following provisions of this article, the promoter may at its own expense and from time to time carry out such protective works to—

(a) any building; or

(b) any road; or

(c) any apparatus of a statutory undertaker,

lying within the Order limits as the promoter considers to be necessary or expedient.

(2) Protective works may be carried out—

(a) at any time before or during the construction in the vicinity of the building, road or apparatus of any part of the authorised works; or

(b) after the completion of the construction of that part of the authorised works in the vicinity of the building, road or apparatus at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised works is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised the promoter may, subject to paragraph (5), enter and survey any building, go onto and survey any road

⁽¹⁷⁾ 1991 c. 56.

⁽¹⁸⁾ S.I. 2010/675.

⁽¹⁹⁾ 1991 c. 57.

or access and survey any apparatus falling within paragraph (1) and any land within the curtilage of the building or in which the apparatus is located.

(4) For the purpose of carrying out protective works under this article to a building, road or apparatus the promoter may—

- (a) enter the building, go onto the road or access the apparatus and any land within the curtilage of the building or in which the apparatus is located; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building (but outside its curtilage), or adjacent to the road or land in which apparatus is located, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building, road or apparatus;
- (b) a right under paragraph (3) to enter a building, go onto a road or access apparatus and land within the curtilage of the building or in which the apparatus is located;
- (c) a right under paragraph (4)(a) to enter a building, go onto a road or access apparatus and land within the curtilage of the building or in which the apparatus is located; or
- (d) a right under paragraph (4)(b) to enter land,

the promoter must, except in the case of emergency, serve on the owners and occupiers of the building or land or owner of the road or the apparatus not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land or owners of the road or the apparatus concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land, go onto a road or access apparatus to be referred to arbitration under article 51 (arbitration).

(7) The promoter must compensate the owners and occupiers of any building or land or owners of the road or the apparatus in relation to which the powers conferred by this article have been exercised for any loss or damage arising to them by reason of the exercise of those powers.

(8) Where—

- (a) protective works are carried out under this article to a building or road or apparatus falling within paragraph (1); and
- (b) within the period of 5 years beginning with the day on which the part of the authorised works constructed in the vicinity of the building, road or apparatus is first opened for use it appears that the protective works are inadequate to protect the building, road or apparatus against damage caused by the construction or operation of that part of the authorised works,

the promoter must compensate the owners and occupiers of the building or road or apparatus for any loss or damage sustained by them.

(9) Without affecting article 50 (no double recovery) nothing in this article relieves the promoter from any liability to pay compensation under section 10(2) of the 1965 Act.

(10) Any compensation payable under paragraph (7) or (8) is to be determined, in case of dispute, under Part 1 of the 1961 Act.

(11) This article shall not apply to any land within the limits of land to be temporarily used for the oversailing of equipment.

(12) In this article—

“protective works” in relation to a building, road or apparatus means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building, road or apparatus by the construction, maintenance or operation of the authorised works; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building, road or apparatus by the construction, maintenance or operation of the authorised works,

“road” includes any structures supporting the road.

Power to survey and investigate land

15.—(1) The promoter may for the purposes of this Order—

- (a) survey or investigate any land shown within the Order limits or which may be affected by the authorised works;
- (b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions as the promoter thinks fit on the land 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 the land;
- (d) place on, leave on and remove from the land apparatus for use in connection with the surveying 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) Any person entering land under this article on behalf of the promoter—

- (a) must, if so required, before or after entering the land produce written evidence of authority to do so; and
- (b) 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.

(4) 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.

(5) The promoter 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 of the 1961 Act.

(6) Nothing in this article overrides the requirement for scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979 (20).

(7) If either a highway authority or a street authority fails to notify the promoter of its decision within 14 days of receiving an application for consent under paragraph (4), that authority is deemed to have granted consent.

(8) This article does not apply to any land within the limits of land to be temporarily used for the oversailing of equipment.

Navigation

Temporary closure of, and works in the Aire and Calder Navigation

- 16.**—(1) The promoter may, in connection with the construction of the authorised works—
- (a) temporarily interfere with the relevant part of the waterway by constructing or maintaining caissons, cofferdams or other temporary works at any point within the relevant part of the waterway as the promoter considers necessary or expedient;
 - (b) temporarily moor or anchor barges or other vessels or craft in the relevant part of the waterway;
 - (c) load or unload into and from such barges, other vessels or craft as are referred to in subparagraph (b) equipment, machinery, soil and any other materials;
 - (d) temporarily close to navigation the relevant part of the waterway; and
 - (e) temporarily remove the water from the relevant part of the waterway that is so interfered with or closed.
- (2) During the period of any closure referred to in paragraph (1)(d), all rights of navigation and other rights relating to, and any obligations of the Trust to manage, the relevant part of the waterway so closed are to be suspended and unenforceable against the Trust.
- (3) The power conferred by paragraph (1) must be exercised in a way which secures—
- (a) that no more of the relevant part of the waterway is closed to navigation at any time than is necessary in the circumstances; and
 - (b) that, if complete closure to navigation of the relevant part of the waterway becomes necessary, reasonable steps are taken to secure that the period of closure is kept to a minimum and that the minimum obstruction, delay or interference is caused to vessels or craft which may be using or intending to use the part so closed.
- (4) Any person who suffers loss or damage as a result of the suspension or interruption of any right under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Extinguishment of navigation rights etc. in the Aire and Calder Navigation

- 17.**—(1) Without limitation on the scope of section 105(5) and (6) of the Transport Act 1968⁽²¹⁾ any rights of navigation over the relevant part of the waterway whether public or private and however arising are extinguished to the extent that such rights are adversely affected by reason of the construction, use and maintenance of the authorised works.
- (2) The promoter must pay compensation to any person who suffers damage or loss by reason of the extinguishment of rights of navigation by virtue of paragraph (1) and any question as to the amount of compensation so paid is to be determined by the tribunal.

Navigation etc. in vicinity of scheduled works

- 18.**—(1) Any person who, other than in an emergency or with some other reasonable cause—
- (a) moors a vessel to any part of the scheduled works without the consent of the promoter;
 - (b) allows any vessel to drift in the vicinity of the scheduled works, except for the purpose of passing through the lock gates or waiting to do so; or
 - (c) moors a vessel in the vicinity of the scheduled works so as to cause an obstruction to the access to any part of the scheduled works,

(21) 1968 c. 73.

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

(2) In this article—

“in the vicinity of the scheduled works” means on or in that part of the relevant waterway within the limits of deviation; and

“lock gates” means the lock gates to the entrance to the Leeds and Liverpool Canal and shown marked by the point “X” on the deposited plans.

Removal of vessels

19.—(1) Subject to paragraphs (2) and (3), whenever any vessel—

(a) is sunk, stranded or abandoned within the relevant part of the waterway; or

(b) left or moored within the relevant part of the waterway without lawful authority,

the promoter may raise, remove, store or otherwise dispose of a vessel to which this paragraph applies where (except in an emergency) it has given not less than 21 days’ written notice to the owner of the vessel, unless it is not practicable after reasonable inquiry to ascertain the name and address of the owner.

(2) Where the promoter proposes to raise, remove, store or otherwise dispose of a vessel to which paragraph (1) applies, the promoter must first give the Trust not less than 28 days’ written notice of its intention to do so.

(3) Where the promoter has given such notice as referred to in paragraph (2) and where—

(a) it is within the powers of the Trust to deal with the vessel; and

(b) the promoter having given not less than 28 days’ written notice to the Trust, is informed by the Trust within that time that the Trust intends to itself raise, remove, store or otherwise dispose of a vessel to which paragraph (1) applies; and

(c) the Trust does raise, remove, store or otherwise dispose of a vessel to which paragraph (1) applies within a reasonable time afterwards,

then the promoter, may not raise, remove, store or otherwise dispose of a vessel to which paragraph (1) applies except in a case of an emergency, in which case the promoter is not required to give the Trust the notice in paragraph (2) provided that the Trust is informed of the action as soon as possible afterwards.

(4) Any notice given by the promoter under paragraph (1) must—

(a) identify the vessel in respect of which the notice is served and its approximate location;

(b) state that if the owner fails to raise and remove the vessel before the expiry of the period specified in the notice, the promoter may raise and remove the vessel and recover all expenses reasonably incurred in doing so; and

(c) indicate that there is a right to refer the matter to arbitration under article 20 (arbitration in respect of removal of vessels).

(5) The promoter may recover from the owner of any such vessel all expenses reasonably incurred by the promoter in respect of the raising, removal, storage or disposal of the vessel or in raising, removing, storing or disposing of any goods raised or removed from the vessel.

(6) In any proceedings by the promoter against a person served with a notice under paragraph (1) for the recovery of any expenses which the promoter is entitled to recover from that person under paragraph (5), it is not open to that person to raise any question which could have been raised on a referral to arbitration under article 51 (arbitration).

(7) Subject to paragraph (8), if any vessel to which paragraph (1) applies is not, within 6 weeks of its removal by the promoter, proved to the promoter's satisfaction to belong to any claimant, the vessel, together with any such goods, is to vest in the promoter.

(8) If within 12 months of its removal a claim is made to the vessel by a person who subsequently proves to the satisfaction of the promoter that the person was the owner of the vessel, or has become the owner since the vessel was sunk, stranded, abandoned, left or moored as mentioned in paragraph (1), then the promoter must—

- (a) if the vessel is unsold, permit that person to retake it with any goods on the vessel upon payment of the expenses referred to in paragraph (5); or
- (b) if the vessel and the goods on the vessel have been sold, pay to that person the amount of the proceeds of such sale after deducting the said expenses, and in case such proceeds are insufficient to reimburse the promoter those expenses the deficiency may be recovered from that person by the promoter.

(9) In this article—

- (a) “goods” means articles and property of every description found on any vessel to which paragraph (1) applies; and
- (b) an “owner”, in relation to any vessel sunk, stranded, abandoned, left or moored as mentioned in paragraph (1), means as the case may be, either—
 - (i) the owner of the vessel at the time of its sinking, stranding, abandonment, leaving or mooring; or
 - (ii) a person who has become the owner of a vessel since the sinking, stranding abandonment, leaving or mooring of the vessel referred to in paragraph (1).

Arbitration in respect of removal of vessels

20.—(1) Any person served with a notice by the promoter under article 19 (removal of vessels) may, within 21 days of service of the notice, serve a counter-notice on the promoter disputing the notice and stating that—

- (a) the vessel is not sunk, stranded or abandoned in the relevant part of the waterway; or
- (b) there has been some informality, defect or error in, or in connection with, the notice,

and any dispute under this article must be determined in accordance with article 51 (arbitration).

(2) If and so far as a dispute under this article is based on the ground of some informality, defect or error in, or in connection with, the notice, the arbitrator must dismiss the dispute if the arbitrator is satisfied that the informality, defect or error was not a material one.

(3) On the hearing of the dispute the arbitrator may confirm or set aside the notice.

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

21.—(1) The promoter may acquire compulsorily—

- (a) so much of the land shown on the deposited plans within the limits of deviation as land to be acquired compulsorily 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 certain lands 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 the promoter's undertaking.

(2) This article is subject to article 25 (new rights only to be acquired in certain lands) and article 27 (temporary use of land for construction of works).

Application of Part 1 of the 1965 Act

22.—(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 1981 Act applies; and
- (b) as if this Order were a compulsory purchase order under that Act.

(2) Part 1 of the 1965 Act, as applied by paragraph (1), has effect as if section 4 (which provides a time limit for compulsory purchase of land) and paragraph 3(3) of Schedule 3 (which makes provision as to the giving of bonds) were omitted.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

23.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(22) applies as if this Order were a compulsory purchase order.

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

(3) In section 3 (preliminary notices) for subsection (1) there is substituted—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority must include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.”.

(4) In that section, in subsection (2), for “(1)(b)” there is substituted “(1)” and after “given” there is inserted “and published”.

(5) In that section, for subsections (5) and (6) there is substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

(6) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after “publication” there is inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) is omitted.

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

(8) References to the 1965 Act are construed as references to that Act as applied to the acquisition of land under article 21 (power to acquire land).

Power to acquire new rights

24.—(1) The promoter may acquire compulsorily—

- (a) such easements or other rights over any land referred to in paragraph (1)(a) or (b) of article 21 (power to acquire land), or
- (b) impose restrictive covenants affecting any such land referred to in paragraph (1)(a) of article 21,

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) Schedule 8 (modification of compensation and compulsory purchase enactments for creation of new rights or imposition of restrictive covenants) 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.

(3) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 8), where the promoter acquires a right or the benefit of a restrictive covenant over land under paragraph (1) the promoter is not required to acquire a greater interest in that land.

New rights only to be acquired in certain lands

25.—(1) In the case of the land specified in Schedule 9 (acquisition of new rights only) the promoter’s powers of compulsory acquisition under article 21 (power to acquire land) are limited to the acquisition of such easements or other new rights in the land as it may require for the purposes of—

- (a) the acquisition of rights over land to provide station access; and
- (b) the creation and acquisition of easements or other rights over land for the purpose of or in connection with the construction or maintenance of the authorised works including the passage of persons or vehicles (with or without materials, plant and machinery) over that land for the purposes of the authorised works or for purposes ancillary to the authorised works.

(2) Where the promoter acquires easements or other new rights in the land specified in Schedule 9, article 24 (power to acquire new rights) applies as it applies to the acquisition of a new right under that article.

(3) In this article “station access” means the provision of pedestrian access for train passengers and visitors to Leeds Railway Station to and from the scheduled works from Wharf Approach in the City of Leeds.

Rights under or over streets

26.—(1) The promoter 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), the power under paragraph (1) may be exercised in relation to a street without the promoter being required to acquire any part of the street or any easement or right in the street.

(3) 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 the promoter 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.

(4) 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.

(5) Compensation is not payable under paragraph (3) to any person who is an undertaker to whom section 85 of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary possession of land

Temporary use of land for construction of works

27.—(1) The promoter may, in connection with the carrying out of the authorised works—

- (a) enter upon 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) any other land within the Order limits in respect of which no notice of entry has been served under section 11 of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981;
- (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;
- (d) construct any permanent works on that land: and
- (e) construct the permanent mitigation works specified in relation to land in column (3) of Schedule 10.

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

(3) Without limitation on the scope of paragraph (1)(a)(i) the power exercisable under paragraph (1)(a)(i) in respect of the lands shown within the limits of land to be temporarily used for the oversailing of equipment is to be limited to the temporary occupation and use of the designated air-space for the purposes of the operation of a crane through the designated air-space in connection with the construction of the authorised works.

(4) The promoter 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 columns (1) and (2) of Schedule 10, 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 the land was taken unless the promoter 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 Compulsory Purchase (Vesting Declarations) Act 1981 in relation to that land.
- (5) Before giving up possession of land of which temporary possession has been taken under this article, the promoter must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the promoter is not to be required to replace a building removed under this article.
- (6) The promoter 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.
- (8) Without affecting article 50 (no double recovery), 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 execution of any works, other than loss or damage for which compensation is payable under paragraph (6).
- (9) 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).
- (10) Where the promoter takes possession of land under this article, the promoter is not required to acquire the land or any interest in it.
- (11) Section 13 of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 22(1) (application of Part 1 of the 1965 Act).
- (12) In this article "designated air-space" means so much of the air-space as is comprised in the air-space directly above the highest point of the building currently located on the land specified in paragraph (3) but, subject to paragraph (13), must not be below a level 54 metres above the level of the highway of Little Neville Street at the date of the coming into effect of this Order.
- (13) In the assembly and disassembly by the promoter of a crane within the air-space above the lands numbered 158 on the deposited plans, the designated air-space must not be below a level 15 metres above the level of the highway of Little Neville Street.
- (14) Paragraph (13) only applies to the assembly and disassembly of the crane and once operational it may only operate within the designated air-space as provided for in paragraph (12).

Temporary use of land for maintenance of works

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

- (a) enter upon and take temporary possession of any land within the limits of deviation if such possession is reasonably required for the purpose of maintaining the work or any ancillary works connected with it or securing the safe operation of any such work; 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 the promoter 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 the promoter must serve notice of the intended entry on the owners and occupiers of the land.
- (4) The promoter 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, the promoter must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.
- (6) The promoter 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.
- (8) Without affecting article 50 (no double recovery), 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 execution of any works, other than loss or damage for which compensation is payable under paragraph (6).
- (9) Where the promoter takes possession of land under this article, the promoter is not required to acquire the land or any interest in it.
- (10) Section 13 of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 22(1) (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

29.—(1) 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.

Set-off for enhancement in value of retained land

30.—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal must set off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging

to that person in the same capacity which will accrue to that person by reason of the construction of the authorised works.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 24 (power to acquire new rights) and article 25 (new rights only to be acquired in certain lands), the tribunal must set off against the value of the rights so acquired—

- (a) any increase in the value of the land over which the new rights are required; and
- (b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity,

which will accrue to that person by reason of the construction of the authorised works.

(3) The 1961 Act has effect, subject to paragraphs (1) and (2), as if this Order were a local enactment for the purposes of that Act.

Supplementary

Acquisition of part of certain properties

31.—(1) This article applies instead of section 8(1) of the 1965 Act (as applied by article 22 (application of Part 1 of the 1965 Act)) in any case where—

- (a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the promoter a counter-notice objecting to the sale of the land subject to the notice to treat which states that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner must sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner must sell only the land subject to the notice to treat is, unless the promoter agrees to take the land subject to the counter-notice, to be referred to the tribunal.

(5) If on such a reference the tribunal determine that the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner must sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determine that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat is deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determine that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but
- (b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat is deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the promoter is authorised to acquire compulsorily under this Order.

(8) If the promoter agrees to take the land subject to the counter-notice, or if the tribunal determine that—

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
- (b) the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat is deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the promoter is authorised to acquire compulsorily under this Order.

(9) In any case where by virtue of a determination by the tribunal under this article a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the promoter may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and if it does so must pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the promoter must pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

Extinction or suspension of private rights of way

32.—(1) Subject to article 17 (extinguishment of navigation rights etc. in the Aire and Calder Navigation) and 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 the promoter, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the promoter under section 11(1) of the 1965 Act,

whichever is the sooner.

(2) Subject to paragraph (6), in respect of land owned by the promoter and required for the purposes of this Order, all private rights of way are extinguished on the appropriation of the land for any of those purposes by the promoter.

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

(4) 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.

(5) This article does not apply in relation to any right of way to which section 271 or 272 of the 1990 Act (extinguishment of rights of statutory undertakers etc.) or paragraph 2 of Schedule 12 (provisions relating to statutory undertakers etc.) applies.

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

- (a) any notice given by the promoter before the completion of the acquisition of the land, the promoter's appropriation of it, the promoter's entry onto it or the promoter's taking temporary possession of it that any or all of those paragraphs do not apply to any right of way specified in the notice; and
- (b) any agreement made (whether before or after any of the events mentioned in sub-paragraph (a) and before or after the coming into force of this Order) which makes reference to this article between the promoter and the person in or to whom the right of way in question is vested or belongs.

(7) If any such agreement as is mentioned in sub-paragraph (6)(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

33.—(1) After the end of the period of 5 years beginning with 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 22 (application of Part 1 of the 1965 Act); and
- (b) no declaration is to be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981(23), as applied by article 23 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The powers conferred by article 27 (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 the promoter remaining in possession of land after the end of that period, if the land was entered and possession of it was taken before the end of that period.

PART 4

MISCELLANEOUS AND GENERAL

Planning permission

34. Planning permission which is deemed by a direction under section 90(2A) of the 1990 Act to be granted in relation to the authorised works (or any of them) 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).

Power to lop trees overhanging the authorised works

35.—(1) The promoter 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), the promoter 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.

Application of landlord and tenant law

36.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised works or the right to operate the same; and
- (b) any agreement entered into by the promoter with any person for the construction, maintenance, use or operation of the authorised works, or any part of them,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) No such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Obstruction of construction of authorised works

37. Any person who, without reasonable excuse—

- (a) obstructs any person acting under the authority of the promoter 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 the promoter,

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

Traffic signs

38.—(1) The promoter may, for the purposes of, or in connection with the construction or operation of, the authorised works, place or maintain traffic signs of a type prescribed by regulations made under section 64(1)(a) (general provisions as to traffic signs) of the 1984 Act or of a character authorised by the Secretary of State on any street specified in column (1) of Schedule 4 (streets subject to alteration of layout) or which gives access to such a street, or on any street in connection with any instrument made under article 39 (traffic regulation) or any other street as reasonably required for conveying information to traffic.

(2) The promoter—

- (a) must consult with the traffic authority as to the placing of signs; and
- (b) unless the traffic authority is unwilling to do so and subject to any directions given under section 65 (powers and duties of highway authorities as to placing of traffic signs) of the 1984 Act, must enter into arrangements with the traffic authority for the signs to be placed and maintained by the traffic authority.

(3) Any power conferred by section 65 of the 1984 Act to give directions to a traffic authority or local traffic authority as to traffic signs includes a power to give directions to the promoter as to traffic signs under this article; and the powers conferred by paragraph (1) are exercisable subject to and in conformity with any directions given under that section.

(4) A traffic authority or other authority having power under or by virtue of the 1984 Act to place and maintain, or cause to be placed and maintained, traffic signs on any street referred to in paragraph (1) must consult with the promoter as to the placing of any traffic signs which may affect the authorised works.

(5) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.

Traffic regulation

39.—(1) Subject to the provisions of this article, and the consent of the traffic authority in whose area the street concerned is situated, which consent must not be unreasonably withheld, the promoter may, for the purposes of the authorised works—

- (a) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles in the manner specified in Parts 1 and 2 of Schedule 11 (traffic regulation) on those streets specified in column (2) and along the lengths and between the points specified in column (3) of that Part of that Schedule;
- (b) make provision as to the movement of vehicular traffic in the manner specified in Part 3 of Schedule 11 on the street specified in column (2) as respects direction to the extent specified in column (3) of that Part of that Schedule; and
- (c) permit or prohibit driving in the manner specified in Part 4 of Schedule 11 to that street specified in column (2) and along the lengths, between the points to the extent specified in column (3) of that Part of that Schedule.

(2) Without limitation on the scope of the specific powers conferred by paragraph (1) but subject to the provisions of this article and the consent of the traffic authority in whose area the street concerned is situated, which consent must not be unreasonably withheld, the promoter may, in so far as may be necessary or expedient for the purposes of, in connection with, or in consequence of the construction, maintenance or operation of the authorised works—

- (a) revoke, amend or suspend the whole or in part any Order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any street;
- (c) authorise the use as a parking place of any street;
- (d) restrict the speed of vehicles along a street;
- (e) make provision as to the direction or priority of vehicular traffic on any street; and
- (f) permit or prohibit vehicular access to any street,

either at all times or at times, on days or during such periods as may be specified by the promoter.

(3) The powers conferred by paragraphs (1) and (2) may be exercised at any time prior to the expiry of 12 months from the opening of the authorised works for public use but subject to paragraph (7) any prohibition, restriction or other provision made under paragraph (1) or (2) may have effect both before and after the expiry of that period.

(4) The promoter must consult the chief officer of police and the traffic authority in whose area the street is situated before complying with the provisions of paragraph (5).

(5) The promoter must not exercise the powers conferred by paragraph (1) or (2) unless it has—

(a) given not less than—

(i) 12 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or

(ii) 4 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily,

to the chief officer of police and to the traffic authority in whose area the street is situated; and

(b) advertised its intention in such manner as the traffic authority may specify in writing within 28 days of its receipt of notice of the promoter's intention in the case of sub-paragraph (a)

(i), or within 7 days of its receipt of notice of the promoter's intention in the case of sub-paragraph (a)(ii).

(6) Any prohibition, restriction or other provision made by the promoter under paragraph (1) or (2)—

(a) has effect as if duly made by, as the case may be—

the traffic authority in whose area the street is situated, as a traffic regulation order under the 1984 Act; or

the local authority in whose area the street is situated, as an order under section 32 of the 1984 Act,

and the instrument by which it is effected may specify savings and exemptions (in addition to those mentioned in Schedule 11) to which the prohibition, restriction or other provision is subject; and

(b) be deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004⁽²⁴⁾ (road traffic contraventions subject to civil enforcement).

(7) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the promoter from time to time by subsequent exercise of the powers conferred by paragraph (2) within a period of 24 months from the opening of the authorised works for public use.

(8) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.

Defence to proceedings in respect of statutory nuisance

40.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990⁽²⁵⁾ (summary proceedings by person aggrieved by statutory nuisances) in relation to a nuisance falling within paragraph (g) of section 79(1) 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 the defendant shows—

⁽²⁴⁾ 2004 c. 18.

⁽²⁵⁾ 1990 c. 43.

- (a) that the nuisance relates to premises used by the promoter for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to authorised works; and
 - (b) that the nuisance is attributable to the carrying out of authorised works which are being carried out in accordance with a notice served under section 60, or a consent given under section 61 or 65, of the Control of Pollution Act 1974 **(26)**; or
 - (c) that the nuisance is a consequence of the operation of the authorised works and that it cannot reasonably be avoided.
- (2) The following provisions of the Control of Pollution Act 1974, namely—
- (a) 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); and
 - (b) section 65(8) (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 the promoter for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works.

(3) The provisions of this article do not affect the application to the authorised works of section 122 of the 1993 Act**(27)** (statutory authority as a defence to actions in nuisance, etc.) or any rule of common law having similar effect.

Trespass

41.—(1) Any person who trespasses on any part of the land occupied by the promoter for the purposes of constructing the scheduled works is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) No person is to be convicted of an offence under this article unless it is shown that a notice warning the public not to trespass on such land was clearly exhibited and maintained in close proximity to all such land occupied by the promoter.

Disclosure of confidential information

42. A person who—

- (a) enters a factory, workshop or workplace in pursuance of the provisions of article 14 (protective works to buildings, roads or apparatus of a statutory undertaker) or article 15 (power to survey and investigate land); and
- (b) discloses to any person any information obtained pursuant to sub-paragraph (a) 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.

43. The provisions of Schedule 12 (provisions relating to statutory undertaker etc.) have effect.

(26) 1974 c. 40.

(27) 1993 c. 43 as amended by the Transport Act 2000 (c. 38) and the Railways Act 2005 (c. 14).

For the protection of specified undertakers

44. The provisions of Schedule 13 (for the protection of specified undertakers) have effect.

For the protection of operators of electronic communications code networks

45. The provisions of Schedule 14 (for the protection of operators of electronic communications code networks) have effect.

For the protection of the Trust

46. The provisions of Schedule 15 (for the protection of the Trust) have effect.

For the protection of the Environment Agency

47. The provisions of Schedule 16 (for the protection of the Environment Agency) have effect.

Certification of plans etc.

48. The promoter must, as soon as practicable after the making of this Order, submit copies of the book of reference, the deposited plans and the deposited sections to the Secretary of State for certification that they are, respectively, true copies of the book of reference, the deposited plans and the deposited sections 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

49.—(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.

(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 of the Interpretation Act 1978(28) 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.

(28) 1978 c. 30.

(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 any 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.

No double recovery

50. 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

51. 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, 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 authority of the Secretary of State

Martin Woods
Head of the Transport and Works Act Orders
Unit
Department for Transport

1st August 2013

Status: This is the original version (as it was originally made).

SCHEDULES

SCHEDULE 1

Articles 2 and 4

SCHEDULED WORKS

In the City of Leeds—

Work No. 1 - A new station entrance building to the south side of Leeds Railway Station incorporating a pedestrian access bridge across the Aire and Calder Navigation and supported on reinforced concrete piles located in the bed of the Aire and Calder Navigation and including escalators and lifts commencing on the west side of the Aire and Calder Navigation at reference point 429872 (easting) and 833155 (northing) and extending in a north westerly direction and terminating on the east side of the Aire and Calder Navigation at reference point 429828 (easting), 433142 (northing).

Work No. 1A - A ramped pedestrian footbridge linking Work No. 1 with, and forming a pedestrian access along Dark Neville Street including the removal of the existing pedestrian footbridge commencing at reference point 429866 (easting) and 433168 (northing) and terminating at reference point 429822 (easting) and 433141 (northing).

SCHEDULE 2

Articles 4 and 21

ACQUISITION OF CERTAIN LANDS 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>Purpose for which land may be acquired or used</i>
City of Leeds	103, 104, 105, 106, 109 and 110	Provision of construction and maintenance access, station access and working sites
	111	Provision of construction and maintenance access, station access, a working site and oversailing of equipment
	146, 147 and 148	Provision of construction and maintenance access, access to Leeds Railway Station, a working site, oversailing of equipment and landscaping

SCHEDULE 3

Article 6

STREETS SUBJECT TO STREET WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to street works</i>
City of Leeds	Little Neville Street Water Lane Meadow Lane Private footways adjoining Waterman Place

SCHEDULE 4

Articles 7 and 38

STREET SUBJECT TO ALTERATION OF LAYOUT

<i>(1)</i> <i>Street subject to alteration of layout</i>	<i>(2)</i> <i>Description of alteration</i>
Little Neville Street	Realignment of street and alteration of level of carriageway

SCHEDULE 5

Article 8

STREET 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 Leeds	Pedestrian footbridge spanning the Aire and Calder Navigation in Dark Neville Street	Within limits of deviation for the scheduled works	Work No. 1A

Status: This is the original version (as it was originally made).

SCHEDULE 6

Article 9

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 Leeds	Little Neville Street	Within Order limits
	Dark Neville Street	Within Order limits
	Neville Street	Within Order limits
	Footbridge over Aire and Calder Navigation at Waterman’s Place	Within Order limits
	Meadow Lane	Within Order limits
	Water Lane	Within Order limits
	Granary Wharf Piazza	Within Order limits
	Private footways within Waterman’s Place	Within Order limits
	Footway adjacent to south bank of Aire and Calder Navigation	Between points TS1 and TS2

SCHEDULE 7

Article 10

ACCESS TO WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Description of access</i>
City of Leeds	Meadow Lane Water Lane Little Neville Street

SCHEDULE 8

Article 24

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS
FOR CREATION OF NEW RIGHTS OR IMPOSITION OF RESTRICTIVE COVENANTS

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, and in the case of the 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 Land Compensation Act 1973(29) has effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (a) for the words “land is acquired or taken” there are substituted the words “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for the words “acquired or taken from him” there are substituted the words “over which the right is exercisable or the restrictive covenant enforceable”.

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

- (a) for the word “part” in paragraphs (a) and (b) there are substituted the words “a right over or restrictive covenant affecting land consisting”;
- (b) for the word “severance” there are substituted the words “right over or restrictive covenant affecting the whole of the house, building or manufactory or of the house and the park or garden”;
- (c) for the words “part proposed” there are substituted the words “right or restrictive covenant proposed”;
- (d) for the words “part is” there are substituted the words “right or restrictive covenant is”.

Application of the 1965 Act

3.—(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are to be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired or 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.

(2) Without limitation on the scope of sub-paragraph (1), Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right or in relation to the imposition of a restrictive covenant, with the modifications specified in the following provisions of this Schedule.

(29) 1973 c. 26.

4. For section 7 of the 1965 Act (measure of compensation in case of severance) there is substituted the following section—

“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.”.

5. For section 8 of the 1965 Act (other provisions as to divided land) there is substituted the following—

“8.—(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over, or a restrictive covenant affecting, land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

- (a) a question of disputed compensation in respect of the purchase of the right or the imposition of the restrictive covenant would apart from this section fall to be determined by the Upper Tribunal (“the tribunal”); and
- (b) before the tribunal has determined that question, the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that interest, and—
 - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased or the restrictive covenant imposed without material detriment to that land; or
 - (ii) where that land consists of such a park or garden, that the right cannot be purchased or the restrictive covenant imposed without seriously affecting the amenity or convenience of the house to which that land belongs,

the Leeds Railway Station (Southern Entrance) Order 2013⁽³⁰⁾ (“the Order”), in relation to that person, ceases to authorise the purchase of the right and is deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section is to be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”.

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);

(30) S.I. 2013/1933.

- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified so as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

7. Section 11 of the 1965 Act (powers of entry) is modified so as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right or restrictive covenant, it has power, exercisable in the equivalent circumstances and subject to the equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

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

9. Section 22 of the 1965 Act (interests omitted from purchase) 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.

SCHEDULE 9

Articles 21 and 25

ACQUISITION OF NEW RIGHTS ONLY

<i>(1)</i>	<i>(2)</i>
<i>Location</i>	<i>Number of land shown on the deposited plans</i>
In the City of Leeds	103, 104, 105, 106, 109, 110, 111

SCHEDULE 10

Articles 4, 21 and 27

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
<i>Area</i>	<i>Number of land shown on the deposited plans</i>	<i>Purpose for which temporary possession may be taken</i>	<i>Authorised work</i>
City of Leeds	101, 102, 107, 108	Working site and construction access	The scheduled works

Status: This is the original version (as it was originally made).

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on the deposited plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Authorised work</i>
	112	Working site, construction access and oversailing of equipment	The scheduled works
	113, 114, 119, 130, 138, 152, 156, 158	Oversailing of equipment	The scheduled works
	115, 118, 120, 121, 123, 124, 125, 126, 127, 128, 131, 137, 142, 143, 144, 145, 153 and 154	Working site, construction access and oversailing of equipment	The scheduled works
	149, 150 and 151	Working site, construction access, landscaping and oversailing of equipment	The scheduled works
	155 and 157	Temporary traffic management and oversailing of equipment	The scheduled works
	122	Construction access, temporary construction moorings and oversailing of equipment	The scheduled works
	201	Temporary construction moorings	The development and use of a construction working site at Water Lane and Meadow Lane
	202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213 and 214	Working site and construction access	The development and use of a construction working site at Water Lane and Meadow Lane

SCHEDULE 11

Article 39

TRAFFIC REGULATION

Interpretation

In column (1) of each of the tables below, the number before the full stop refers to the relevant sheet number of the traffic regulation and rights of way plans, and the number after the full stop refers to the relevant traffic regulation reference number shown on that sheet. In the event of there being any discrepancy between a provision in this Schedule and the illustration of that provision shown on the traffic regulation and rights of way plans, this Schedule prevails.

PART 1

NO WAITING AT ANY TIME

<i>(1)</i> <i>No.</i>	<i>(2)</i> <i>Road</i>	<i>(3)</i> <i>Extent</i>	<i>(4)</i> <i>Notes</i>
1.1	Wharf Approach	West side from its junction with the Granary Wharf car park in a northerly direction for a distance of 32 metres	To maintain vehicular flow
1.2	Wharf Approach	South-west side from its junction with the Granary Wharf car park to its junction with Water Lane, a distance of 109 metres	To maintain vehicular flow
1.3	Wharf Approach	North-east side from its junction with Water Lane in a north-westerly direction for 20 metres	To maintain vehicular flow
1.4	Wharf Approach	North-east side from a point 26 metres northwest of its junction with Water Lane in a north-westerly direction for a distance of 65 metres	To maintain vehicular flow
1.5	Wharf Approach	East side from its junction with Canal Wharf in a northerly direction for 11 metres	To maintain vehicular flow
1.6	Canal Wharf	North side from its junction with Wharf Approach in an easterly direction for a distance of 93 metres	To maintain vehicular flow
1.7	Canal Wharf	South side from its junction with Wharf Approach in an easterly direction for a distance of 110 metres	To maintain vehicular flow
1.8	Canal Wharf	North side from a point 92 metres east of its junction with Wharf Approach in a north-	To maintain vehicular flow

Status: This is the original version (as it was originally made).

(1) No.	(2) Road	(3) Extent	(4) Notes
		easterly direction for 3 metres	
1.9	Canal Wharf	North side from a point 98 metres east of its junction with Wharf Approach in a north-westerly direction for 3 metres	To maintain vehicular flow
1.10	Canal Wharf	South side from a point 108 metres southeast of its junction with Wharf Approach in a south-easterly direction for 6 metres	To maintain vehicular flow
1.11	Canal Wharf	South side from a point 115 metres east of its junction with Wharf Approach in a south-westerly direction for 6 metres	To maintain vehicular flow
1.12	Canal Wharf	North side from a point 98 metres east of its junction with Wharf Approach in a south-easterly direction for 70 metres	To maintain vehicular flow
1.13	Canal Wharf	South side from a point 115 metres east of its junction with Wharf Approach in a south-easterly direction to its junction with Water Lane, a distance of 77 metres	To maintain vehicular flow
1.14	Canal Wharf	North-east side from a point 163 metres east of its junction with Wharf Approach in a south-easterly direction for 6 metres	To maintain vehicular flow
1.15	Canal Wharf	North-east side from its junction with Water Lane in a north-westerly direction for 28 metres	To maintain vehicular flow

<i>(1)</i> No.	<i>(2)</i> Road	<i>(3)</i> Extent	<i>(4)</i> Notes
1.16	Wharf Approach	East side from its junction with Canal Wharf in a southerly direction for 48 metres	To maintain vehicular flow

PART 2

NO LOADING AT ANY TIME

<i>(1)</i> No.	<i>(2)</i> Road	<i>(3)</i> Extent	<i>(4)</i> Notes
2.1	Wharf Approach	West side from its junction with the Granary Wharf car park in a northerly direction for a distance of 32 metres	To maintain vehicular flow
2.2	Wharf Approach	South-west side from its junction with the Granary Wharf car park to its junction with Water Lane, a distance of 109 metres	To maintain vehicular flow
2.3	Wharf Approach	North-east side from its junction with Water Lane in a north-westerly direction for 20 metres	To maintain vehicular flow
2.4	Wharf Approach	North-east side from a point 26 metres northwest of its junction with Water Lane in a north-westerly direction for a distance of 65 metres	To maintain vehicular flow
2.5	Wharf Approach	East side from its junction with Canal Wharf in a northerly direction for 8 metres	To maintain vehicular flow
2.6	Intentionally left blank		
2.7	Intentionally left blank		
2.8	Canal Wharf	North-east side from a point 92 metres	To maintain vehicular flow

Status: This is the original version (as it was originally made).

(1) No.	(2) Road	(3) Extent	(4) Notes
		southeast of its junction with Wharf Approach in a north-easterly direction for 3 metres.	
2.9	Canal Wharf	North side from a point 98 metres south-east of its junction with Wharf Approach in a north-westerly direction for 4 metres.	To maintain vehicular flow.
2.10	Canal Wharf	South side from a point 108 metres south-east of its junction with Wharf Approach in a south-easterly direction for 6 metres.	To maintain vehicular flow.
2.11	Canal Wharf	South side from a point 115 metres south-east of its junction with Wharf Approach in a south-westerly direction for 8 metres	To maintain vehicular flow.
2.12	Intentionally left blank.		
2.13	Intentionally left blank.		
2.14	Canal Wharf	North-east side from a point 167 metres east of its junction with Wharf Approach in a south-easterly direction for 6 metres	To maintain vehicular flow
2.15	Canal Wharf	North-east side from its junction with Water Lane in a north-westerly direction for 28 metres	To maintain vehicular flow
2.16	Wharf Approach	East side from its junction with Canal Wharf in a southerly direction for 48 metres	To maintain vehicular flow

PART 3

PRESCRIBED MOVEMENT OF TRAFFIC

(1) <i>No.</i>	(2) <i>Road</i>	(3) <i>Extent</i>	(4) <i>Notes</i>
3.1	Little Neville Street	Compulsory ahead only movement onto Sovereign Street	

PART 4

PROHIBITION OF DRIVING WITH SPECIFIED EXEMPTIONS

(1) <i>No.</i>	(2) <i>Road</i>	(3) <i>Extent</i>	(4) <i>Notes</i>
4.1	Little Neville Street	Prohibition of driving between 7am and 10pm except for access to off-street premises, for loading/unloading by goods vehicles between 10am and 4pm, and 7pm and 7am from a point 12 metres south of its junction with Dark Neville Street and to its junction with Neville Street	To prevent private vehicles, taxis and private hire vehicles from picking-up or dropping-off passengers to the Leeds Station Southern Entrance

SCHEDULE 12

Articles 6, 8 and 43

PROVISIONS RELATING TO STATUTORY UNDERTAKERS ETC.

Apparatus of statutory undertaker etc. on land acquired

1.—(1) Sections 271 to 274 of the 1990 Act (power to extinguish rights of statutory undertaker etc. and power of statutory undertaker etc. to remove or re-site apparatus) apply in relation to any land acquired or appropriated by the promoter 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, which provide for the payment of compensation) have effect accordingly.

Status: This is the original version (as it was originally made).

(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 a public utility undertaker 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 the promoter compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

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

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

is entitled to recover from the promoter 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) of the 2003 Act.

Apparatus of statutory undertakers etc. in stopped up streets

2.—(1) Where a street is stopped up under this Order any statutory utility whose apparatus is under, in, upon, 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 this Order any statutory utility whose apparatus is under, in, upon, over, along or across the street may, and if reasonably requested to do so by the promoter 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 has power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in that other position.

(3) Subject to the following provisions of this paragraph, the promoter 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 the promoter, 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 sub-paragraph would be payable to the statutory utility by virtue of sub-paragraph (3) is to be reduced by the amount of that excess.

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

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

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

(7) Sub-paragraphs (3) to (6) do not apply where the 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 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and
- (b) the allowable costs are to be borne by the promoter 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).

Railway and navigation undertakings

3.—(1) Subject to the following provisions of this paragraph, the powers under article 6 (power to execute street works) to break up or open a street are not exercisable where the street, not being a highway maintainable at public expense (within the meaning of the 1980 Act)—

- (a) is under the control or management of, or is maintainable by a railway or tramway undertaker or a navigation authority; or
- (b) forms part of a level crossing belonging to any such undertakers or to such an authority or to any other person,

except with the consent of the undertakers or authority or, as the case may be, of the person to whom the level crossing belongs.

(2) Sub-paragraph (1) does not apply to the carrying out under this Order of emergency works, within the meaning of Part 3 of the 1991 Act.

(3) A consent given for the purpose of sub-paragraph (1) may be made subject to such reasonable conditions as may be specified by the person giving it but must not be unreasonably withheld.

(4) In this paragraph “navigation authority” means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary, harbour or dock.

SCHEDULE 13

Article 44

FOR THE PROTECTION OF SPECIFIED UNDERTAKERS

1.—(1) The following provisions, unless otherwise agreed in writing between the promoter and the undertakers concerned, have effect.

(2) The provisions of Schedule 12 (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 Schedule applies.

2.—(1) In this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the undertaker in question to fulfil its statutory functions in a manner not 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⁽³¹⁾) 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, any 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⁽³²⁾; and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 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; and

“undertaker” means—

- (e) any licence holder within the meaning of Part 1 of the Electricity Act 1989;

⁽³¹⁾ 1989 c. 29.

⁽³²⁾ 1991 c. 56.

- (f) a gas transporter within the meaning of Part 1 of the Gas Act 1986⁽³³⁾;
 - (g) a water undertaker within the meaning of the Water Industry Act 1991; and
 - (h) 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.

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

4.—(1) Where any street is stopped up under article 8 (stopping up of streets), any undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up, but nothing in this paragraph affects any right of the promoter or of the undertaker to require the removal of that apparatus under paragraph 6(2) or the power of the promoter to carry out works under paragraph 8.

(2) The promoter must give not less than 28 days' notice in writing of its intention to stop up any street under article 8 to any undertaker whose apparatus is in that street.

5. Regardless of any provision in this Order or anything shown on the deposited plans the promoter must not acquire any apparatus other than by agreement.

6.—(1) If, in the exercise of the powers conferred by this Order, the promoter acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under 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.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the promoter 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 and in that case (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) the promoter must, subject to sub-paragraph (3), afford to the undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the promoter and for the subsequent maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the promoter, or the promoter is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), 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 the promoter, 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.

(4) Any alternative apparatus to be constructed in land of the promoter under 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 the promoter or in default of agreement settled by arbitration in accordance with article 51 (arbitration).

(5) 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 51, and after the grant to the undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and

(33) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by section 76 of the Utilities Act 2000 (c. 27).

subsequently to remove any apparatus required by the promoter to be removed under the provisions of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the promoter gives notice in writing to the undertaker in question that it desires itself to execute any work to which this sub-paragraph applies, that work, instead of being executed by the undertaker, must be executed by the promoter without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the undertaker.

(7) Sub-paragraph (6) applies to any part of any work necessary in connection with construction of alternative apparatus, or the removal of apparatus required to be removed, as will take place in any land of the promoter.

(8) Nothing in sub-paragraph (6) authorises the promoter 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 Schedule, the promoter affords to an undertaker facilities and rights for the construction and maintenance in land of the promoter 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 the promoter and the undertaker in question or in default of agreement settled by arbitration in accordance with article 51 (arbitration).

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

- (a) give effect to all reasonable requirements of the promoter 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 the promoter 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 the promoter 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 the promoter to that undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

8.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 6(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the promoter under paragraph 6(2), the promoter 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 an officer of the undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by the 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 the promoter, reasonably requires the removal of any apparatus and gives written notice to the promoter of that requirement, paragraphs 6 and 7 apply as if the removal of the apparatus had been required by the promoter under paragraph 6(2).

(5) Nothing in this paragraph precludes the promoter 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) The promoter 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.

9.—(1) Subject to the following provisions of this paragraph, the promoter 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 which may be required in consequence of the execution of any such works as are referred to in paragraph 6(2).

(2) The value of any apparatus removed under the provisions of this Schedule 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 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 those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the promoter or, in default of agreement, is not determined by arbitration in accordance with article 51 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under 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 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 by virtue of 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.

Status: This is the original version (as it was originally made).

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 6(2), 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, the promoter 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 the promoter 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 the promoter reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the promoter, 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.

SCHEDULE 14

Article 45

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

1.—(1) The provisions of this Schedule, unless otherwise agreed in writing between the promoter and the operator, have effect.

(2) In this Schedule—

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system are to be construed in accordance with paragraph 1(3A) of that code;

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

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act⁽³⁴⁾;

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit 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.

⁽³⁴⁾ See section 106.

2. The temporary stopping up or diversion of any street under article 9 (temporary stopping up of streets) does not affect any right of the operator under paragraph 9 of the electronic communications code to maintain any apparatus which, at the time of the stopping up or diversion, is in that street.

3.—(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, the promoter 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) Sub-paragraph (1) does not apply to—

- (a) any apparatus in respect of which the relations between the promoter 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.

(3) Nothing in sub-paragraph (1) imposes any liability on the promoter 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.

(4) The operator must give the promoter 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 the promoter 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.

(5) Any difference arising between the promoter and the operator under this Schedule is to be referred to and settled by arbitration under article 51 (arbitration).

SCHEDULE 15

Article 46

FOR THE PROTECTION OF THE TRUST

1.—(1) The following provisions of this Schedule, unless otherwise agreed in writing between the promoter and the Trust, have effect.

(2) In this Schedule—

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

- (a) the execution and placing of that work; and
- (b) any replacing, relaying, removal, alteration, renewal, maintenance, repair or reconstruction of that work as may be carried out during the period of 12 months from the completion of the work;

and “construct” and “constructed” have corresponding meanings;

Status: This is the original version (as it was originally made).

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

- (c) the erosion of the bed or banks of the relevant part of the waterway, or the impairment of the stability of any works, lands or premises forming part of the relevant part of the waterway;
- (d) the silting of the relevant part of the waterway or the deposit of materials in it so as to permanently damage the relevant part of the waterway;
- (e) the pollution of the relevant part of the waterway;
- (f) any permanent alteration in the water level of the relevant part of the waterway, or permanent interference with the supply of water to it, or drainage of water from it; and
- (g) any permanent harm to the ecology of the relevant part of the waterway (including any permanent adverse impact on any site of special scientific interest comprised in the relevant part of the waterway).

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

“plans” includes sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction) and programmes;

“protective work” means a work which is reasonably necessary to be carried out before the commencement of construction of any specified work to prevent detriment;

“specified work” means so much of any of the authorised works as is situated upon, across under, over or within 15 metres of, or may directly and physically affect, the relevant part of the waterway.

2. The promoter must not under the powers conferred by this Order acquire compulsorily any land of the Trust or any easement or other right over such land, other than such land or easements or other rights over such land, as is reasonably necessary for, or in connection with, the construction, maintenance or operation of the authorised works.

3.—(1) The promoter must not in the exercise of the powers conferred by this Order permanently obstruct or interfere with pedestrian or vehicular access to the relevant part of the waterway unless such permanent obstruction or interference with such access is with the consent of the Trust.

(2) Nothing in article 13 (discharge of water) authorises the promoter—

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

except with the consent of the Trust and in accordance with plans approved by, and under the supervision (if given) of, the engineer.

(3) The promoter must not exercise the powers conferred by article 14 (protective works to buildings, roads and apparatus of a statutory undertaker) in relation to any building forming part of the relevant part of the waterway, or situated on land or property of the Trust forming part of the relevant part of the waterway, except with the consent of the Trust.

(4) The promoter must not exercise the powers conferred by article 15 (power to survey and investigate land) or the powers conferred by section 11(3) of the 1965 Act in relation to the relevant part of the waterway except with the consent of the Trust.

(5) The promoter must not exercise the powers conferred by section 271 or 272 of the 1990 Act, as applied by Schedule 12 to this Order, so as to permanently divert any right of access to the relevant part of the waterway, but any such right of access may be permanently diverted with the consent of the Trust.

(6) The consent of the Trust under any of sub-paragraphs (1), (3), (4) and (5) and the approval of plans under sub-paragraph (2) must not be unreasonably withheld or delayed but may be given subject to reasonable conditions which in the case of article 13 (discharge of water) may include conditions—

- (a) specifying the maximum volume of water which may be discharged in any period; and
- (b) authorising the Trust on giving reasonable notice (except in an emergency, when the Trust may require immediate suspension) to the promoter to require the promoter to suspend the discharge of water or reduce the flow of water where this is necessary by reason of any operational requirement of the Trust and where a reasonable alternative is available to enable the promoter to discharge the water in question during the period of the suspension.

4. The promoter must not use any land or property of the Trust forming part of the relevant part of the waterway for the passage or siting of vehicles, plant or machinery employed in the construction of the specified work other than—

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

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

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

7.—(1) Before the commencement of the initial construction of any part of the specified works and again following completion of the specified works the promoter must bear the reasonable costs of the carrying out, by a qualified surveyor or engineer (“the surveyor”) to be approved by the Trust and the promoter, of surveys (“the surveys”) of so much of the relevant part of the waterway and of any land and existing works of the promoter which may provide support for the relevant part of the waterway as will or may be affected by the specified works.

(2) For the purposes of the surveys the promoter must—

- (a) on being given reasonable notice (save in case of emergency, when immediate access must be afforded) afford reasonable facilities to the surveyor for access to the site of the specified works and to any land and existing works of the promoter which may provide support for the relevant part of the waterway as will or may be affected by the specified works; and
- (b) supply the surveyor as soon as reasonably practicable with all such information as he may reasonably require with regard to such land and existing works of the promoter and to the specified works or the method of their construction.

(3) The reasonable costs of the surveys must include the costs of any dewatering or reduction of the water level of any part of the relevant part of the waterway (where reasonably required) which

may be effected to facilitate the carrying out of the surveys and the provisions of this Schedule apply with all necessary modifications to any such dewatering or reduction in the water level as though the same were specified works.

(4) Copies of the reports of the surveys must be provided to both the Trust and the promoter.

8.—(1) The promoter must, before commencing construction of any specified work, including any temporary works, supply to the Trust proper and sufficient plans of that work and such further particulars available to it as the Trust may within 14 days of the submission of the plans reasonably require for the approval of the engineer and must not commence such construction of any specified work until plans of that work have been approved in writing by the engineer or settled by arbitration.

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

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

- (a) any protective work (whether temporary or permanent); and
- (b) such other requirements as may be reasonably necessary to prevent detriment,

and such protective work must be constructed by the Trust or (if the Trust so desires) by the promoter with all reasonable dispatch and the promoter must not commence the construction of any specified work until the engineer has notified the promoter that the protective work has been completed to the engineer's reasonable satisfaction.

9. Without affecting its obligations under the provisions of this Schedule the promoter must consult the Trust on—

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

and must have regard to such views as may be expressed by the Trust, to the extent that these accord with the requirements of the local planning authority in response to such consultation pursuant, in particular, to the requirements imposed on the Trust by section 22 (general environmental and recreational duties) of the British Waterways Act 1995⁽³⁵⁾ and to the interest of the Trust in preserving and enhancing the environment of the relevant part of the waterway.

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

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

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

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled in accordance with this Schedule and with any requirements made under paragraph 8(3)(b);

(35) 1995 c. i.

- (b) under the supervision (if given) and, in the case of any specified work which directly and physically affects the relevant part of the waterway, to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little detriment as is reasonably practicable; and
- (d) in such manner as to cause as little inconvenience as is reasonably practicable to the Trust, its officers and agents and all other persons lawfully using the relevant part of the waterway.

13.—(1) Any pile, stump or other obstruction which becomes exposed in consequence of the construction of a specified work must be removed by the promoter or, if it is not reasonably practicable to remove it, must be cut off at such level below the bed of the relevant part of the waterway as the Trust may direct.

(2) If the promoter fails to remove any such pile, stump or other obstruction within 28 days after receipt of written notice from the Trust requiring the removal, the Trust may carry out the removal and recover its costs from the promoter.

14. The promoter must not in the course of constructing any specified work or protective work or otherwise in connection with the works do or permit anything which may result in the pollution of the relevant part of the waterway or the deposit of materials in it and must take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph; but this provision does not prevent the promoter from carrying out works within the relevant part of the waterway.

15.—(1) The promoter must at all times on being given reasonable notice allow reasonable facilities to the engineer for access to any specified work during its construction; but such facilities for access are subject to the promoter's reasonable requirements for ensuring the safety of the railway and of the engineer and other persons working on the railway.

(2) The promoter must supply the engineer with all such information as the engineer may reasonably require with regard to any specified work or the method of constructing it.

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

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

17.—(1) The promoter must, upon completion of any part of any permanent specified work, remove as soon as practicable any temporary works constructed and materials for temporary works placed in, on, over or under the relevant part of the waterway in connection with that part of the specified work.

(2) All temporary works must be removed to the reasonable satisfaction of the engineer, and in the construction, maintenance and removal of such works the promoter must not cause unavoidable detriment.

Status: This is the original version (as it was originally made).

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

19. Any additional expenses which the Trust may reasonably incur in maintaining the relevant part of the waterway under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such maintenance has been given to the promoter, be repaid by the promoter to the Trust.

20. The promoter must repay to the Trust all fees, costs, charges and expenses reasonably incurred by the Trust—

- (a) in constructing any protective works under the provisions of paragraph 8(3)(a) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the promoter and the supervision by the engineer of the construction or repair of any specified work and any protective work;
- (c) in respect of the employment during the period of the initial construction of any specified work or protective work of any inspectors, watchkeepers and other persons whom it is reasonably necessary to appoint for inspecting, watching and lighting any part of the relevant part of the waterway and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified work or any protective work; and
- (d) in bringing the specified work or any protective work to the notice of users of the relevant part of the waterway.

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

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

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

and subject to sub-paragraph (4) the promoter must effectively indemnify and hold harmless the Trust from and against all claims and demands arising out of any of the matters referred to in paragraphs (a) and (b).

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

(4) The Trust must give the promoter reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand is to be made without the prior consent of the promoter.

22. Where under any provision of this Schedule the Trust or the promoter (as the case may be) is entitled to a capitalised sum, it must provide such details of the formula by which the sum is calculated as may reasonably be requested by the party required to pay the sum.

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

24. Any difference arising between the promoter and the Trust under this Schedule (other than a difference as to the meaning or construction of this Schedule) is to be referred to and settled by arbitration in accordance with article 51 (arbitration).

SCHEDULE 16

Articles 4 and 47

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

1.—(1) The following provisions of this Schedule, unless otherwise agreed in writing between the promoter and the Agency, have effect.

(2) In this Schedule—

“the Agency” means the Environment Agency;

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

“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;

“the fishery” means the relevant part of the waterway containing fish and the spawn, habitat or food of such fish;

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

“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.

2.—(1) Before beginning to construct any specified work, the promoter must submit to the Agency plans of the specified work and such further particulars available to it as the Agency 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 Agency, or determined under paragraph 13.

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

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- (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 Agency 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 Agency 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).

3. Without limitation on the scope of paragraph 2, the requirements which the Agency may make under that paragraph include conditions requiring the promoter 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
- (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.

4.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 3, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Schedule; and
- (b) to the reasonable satisfaction of the Agency,

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

(2) The promoter must give to the Agency 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 Agency is constructed otherwise than in accordance with the requirements of this Schedule, the Agency may by notice in writing require the promoter at the promoter's own expense to comply with the requirements of this Schedule or (if the promoter so elects and the Agency 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 Agency reasonably requires.

(4) Subject to sub-paragraph (5) and paragraph 8, if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served upon the promoter, 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 Agency may execute the works specified in the notice and any expenditure incurred by it in so doing is recoverable from the promoter.

(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 Agency must not except in emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

5.—(1) Subject to the provisions of this Schedule and except to the extent that the Agency or another person is liable to maintain any such work and is not precluded by the exercise of the powers conferred by this Order from so doing, the promoter 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 or on land held by the promoter 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 the promoter is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the promoter to repair and restore the work, or any part of such work, or (if the promoter so elects and the Agency 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 Agency reasonably requires.

(3) Subject to paragraph 8, 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 the promoter, the promoter 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 Agency may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the promoter.

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

6. Subject to paragraph 8, 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 the promoter to the reasonable satisfaction of the Agency and if the promoter fails to do so, the Agency may make good the impairment or damage and recover from the promoter the expense reasonably incurred by it in doing so.

7.—(1) The promoter 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 Agency may serve notice on the promoter 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 8, 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 a fishery, the promoter fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and may recover from the promoter the expense reasonably incurred by it in doing so.

(4) Subject to paragraph 8, 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 Agency may take such steps as are reasonable for the purpose, and may recover from the promoter the reasonable cost of so doing provided that notice specifying those steps is served on the promoter as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

Status: This is the original version (as it was originally made).

8. Nothing in paragraphs 4(4), 5(3), 6, 7(3) and (4) authorises the Agency to execute works on or affecting the authorised works.

9. The promoter must indemnify the Agency in respect of all costs, charges and expenses which the Agency may reasonably incur or have to pay or which it may sustain—

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

10.—(1) Without affecting the other provisions of this Schedule, the promoter must indemnify the Agency in respect of all claims, demands, proceedings, costs, damages, expenses or loss, which may be made or taken against, recovered from, or incurred by, the Agency 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 works 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 the promoter, its contractors, agents or employees whilst engaged upon the work.

(2) The Agency must give to the promoter reasonable notice of any such claim or demand and no settlement or compromise may be made without the agreement of the promoter which agreement must not be unreasonably withheld or delayed.

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

12. For the purposes of Chapter 2 of Part 2 of the Water Resources Act 1991⁽³⁶⁾ (abstraction and impounding of water), section 109 of that Act (as to structures in, over or under watercourses) and Part 4 of the Eels (England and Wales) Regulations 2009⁽³⁷⁾ (passage of eels) as applying to the construction of any specified work, any consent or approval given or deemed to be given by the Agency under this Schedule with respect to such construction is deemed also to constitute a licence under that Chapter to obstruct or impede the flow of inland waters at that point by means of impounding works, to constitute a consent or approval under section 109 and to discharge any liability on the promoter to carry out anything under regulation 14 of the Eels (England and Wales) Regulations 2009, as the case may be.

13. Any dispute arising between the promoter and the Agency under this Schedule, if the parties agree, is to be determined by arbitration under article 51 (arbitration), but otherwise is to be determined by the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Transport acting jointly on a reference to them by the promoter or the Agency, after notice in writing by one to the other.

⁽³⁶⁾ 1991 c. 57.

⁽³⁷⁾ S.I. 2009/3344.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises West Yorkshire Passenger Transport Executive (Metro) and Network Rail Infrastructure Limited together (referred to in this Order as the promoter) to construct and operate an extension of Leeds Railway Station consisting of a new station entrance constructed over the Aire and Calder Navigation to the south of Leeds Railway Station. For these purposes the Order confers powers, compulsorily or by agreement, to acquire land and rights in land to use land. The Order also contains a number of protective provisions for the benefit of the protected undertakers.

The Order also makes provision for miscellaneous ancillary matters including the power to execute street works, extinguish rights of navigation in part of the Aire and Calder Navigation, the temporary stopping up of part of the Aire and Calder Navigation, the carrying out of alterations to the highway and the introduction of measures to regulate the traffic on streets in the vicinity of the proposed works.

A copy of the works and land plans, the book of reference, and the traffic regulation and rights of way plan mentioned in this Order and certified in accordance with article 48 (certification of plans, etc.) of this Order, may be inspected free of charge during working hours of the offices of Metro at 40 - 50 Wellington Street, Leeds LS1 2DE and at the offices of Network Rail Infrastructure Limited Kings Place, 90 York Way London N1 9AG.