
STATUTORY INSTRUMENTS

2015 No. 780

TRANSPORT AND WORKS, ENGLAND
TRANSPORT, ENGLAND

The Network Rail (Ordsall Chord) Order 2015

Made - - - - *31st March 2015*

Coming into force - - *21st April 2015*

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

The Secretary of State, having considered the objections made and not withdrawn, and the report of the person who held the inquiry, has determined to make an Order giving effect to the proposals comprised in the application with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

Notice of the Secretary of State’s determination was published in the London Gazette on 30th March 2015.

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

PART 1

Preliminary

Citation and Commencement

1. This Order may be cited as the Network Rail (Ordsall Chord) Order 2015 and comes into force on 21st April 2015.

⁽¹⁾ [S.I. 2006/1466](#).

⁽²⁾ [1992 c. 42](#). Section 1 was amended by the Planning Act 2008 ([c.29](#)), Schedule 2, paragraphs 51 and 52; section 5 was amended by [S.I. 2012/1559](#)

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 1990 Act” means the Town and Country Planning Act 1990(6);
- “the 1991 Act” means the New Roads and Street Works Act 1991(7);
- “the 2003 Act” means the Electronic Communications Act 2003(8);
- “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;
- “building” includes any structure or erection or any part of a building, structure or erection;
- “carriageway” has the same meaning as in the 1980 Act;
- “cycle track” has the same meaning as in the 1980 Act;
- “electronic transmission” means a communication transmitted—
- (a) by means of an electronic communications network; or
 - (b) by other means but while in electronic form;
- “footpath” and “footway” have the same meanings as in the 1980 Act;
- “highway” and “highway authority” have the same meaning as in the 1980 Act;
- “the land plans” means the plans certified as the land plans by the Secretary of State for the purposes of this Order;
- “limits of deviation” means the limits of deviation for the scheduled works shown on the works plans and the land plans;
- “maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace, and “maintenance” is to be construed accordingly;
- “Network Rail” means Network Rail Infrastructure Limited (company registration number 02904587) whose registered office is at 1 Eversholt Street, London, NW1 2DN;
- “Order land” means the land shown on the land plans which is within the limits of land to be acquired or used and described in the book of reference;
- “Order limits” means the limits of deviation and the limits of additional land to be acquired or used shown on the works plans and the land plans;
- “owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(9);
- “the scheduled works” means the works specified in Schedule 1 (scheduled works) or any part of them;

(3) 1961 c. 33.
 (4) 1965 c. 56.
 (5) 1980 c. 66.
 (6) 1990 c. 8.
 (7) 1991 c. 22.
 (8) 2003 c. 21.
 (9) 1981 c. 67.

“the sections” means the sections included within the works plans and certified as the sections by the Secretary of State for the purposes of this Order;

“statutory undertaker” means—

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

“street” includes part of a street;

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

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

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

“the works plans” means the plans certified as the works plans by the Secretary of State for the purposes of this Order.

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

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

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

(5) References in this Order to points identified by letters and numbers, are construed as references to points so lettered on the works plans.

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

Incorporation of the Railway Clauses Acts

3.—(1) The following provisions of the Railways Clauses Consolidation Act 1845(**10**) are incorporated in this Order—

section 58(**11**) (company to repair roads used by them), except for the words from “and if any question” to the end;

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

section 68 (accommodation works by company);

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

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

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

(10) 1945 c 20.

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

sections 78 to 83, 85 to 85E and Schedules 1 to 3 (minerals under railways), as respectively substituted and inserted by section 15 of the Mines (Working Facilities and Support) Act 1923(12);

section 103(13) (refusal to quit carriage at destination);

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

section 145(14) (recovery of penalties).

(2) Section 12 (signals, watchmen etc.) of the Railways Clauses Act 1863(15) is incorporated in this Order.

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

“the company” means Network Rail;

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

“lease” includes an agreement for a lease;

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

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

“the special Act” means this Order.

Application of the 1991 Act

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

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

(b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64(16) (dual carriageways and roundabouts) of the Highways Act 1980 .

(2) The provisions of the 1991 Act mentioned in paragraph (3) (which, together with other provisions of that Act, apply in relation to the carrying out of street works) and any regulations made or code of practice issued or approved under those provisions apply (with the necessary modifications) in relation to the temporary stopping up, temporary alteration or temporary diversion of a street by Network Rail under the powers conferred by article 12 (temporary stopping up of streets) and the carrying out of works under article 10 (power to execute street works) whether or not the stopping up, alteration or diversion, or the carrying out of such works, constitutes street works within the meaning of that Act.

(3) The provisions of the 1991 Act referred to in paragraph (2) are—
section 59(17) (general duty of street authority to co-ordinate works);

(12) 1923 c. 20. Section 79A was amended by section 48(1)(c) of the Coal Industry Nationalisation Act 1946 (c. 59). Section 85C was amended by virtue of section 17(2)(a) of the Interpretation Act 1978 (c. 30).

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

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

(15) 1863 c. 92.

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

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

section 60 (general duty of undertakers to co-operate);
section 68 (facilities to be afforded to street authority);
section 69 (works likely to affect other apparatus in the street);
section 76 (liability for cost of temporary traffic regulation);
section 77 (liability for cost of use of alternative route); and
all such other provisions as apply for the purposes of the provisions mentioned above.

- (4) Nothing in article 13 (construction and maintenance of new or altered streets) —
- (a) prejudices the operation of section 87 (prospectively maintainable highways) of the 1991 Act; and Network Rail is not, by reason of any duty under that article to maintain a street, to be taken to be a street authority in relation to that street for the purposes of Part 3 of that Act; or
 - (b) has effect in relation to street works with regard to which the provisions of Part 3 of the 1991 Act apply.

Application of local railway enactments

5. The following enactments cease to have effect on the transfer under the powers conferred by this Order to Network Rail of any land within the Order limits to which they relate or, if the land is transferred before the date on which the Order comes into force, on the date that the Order comes into force—

- (a) The Liverpool and Manchester Railway Act 1829⁽¹⁸⁾;
- (b) The London and North Western Railway (New Works and Additional Powers) Act 1867⁽¹⁹⁾; and
- (c) The Manchester Liverpool Road (Castlefield Properties Limited) Light Railway Order 1993⁽²⁰⁾.

Disapplication of legislative provisions

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

- (a) section 23 (prohibition on obstacles etc. in watercourses) of the Land Drainage Act 1991⁽²¹⁾; and
- (b) the provisions of any byelaws made under, or having effect as if made under, section 66 (powers to make byelaws) of that Act, which require consent or approval for the carrying out of the works.

PART 2

Principal powers

Power to construct and maintain works

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

⁽¹⁸⁾ 1829 (10 Geo. IV.) c. xxxv.
⁽¹⁹⁾ 1867 (30 & 31 Vict.) c. cxliv.
⁽²⁰⁾ S.I. 1993/2153.
⁽²¹⁾ 1991 c. 59.

(2) Subject to article 8 (power to deviate) the scheduled works may only be constructed in the lines or situations shown on the works plans and in accordance with the levels shown on the sections.

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

- (a) electrical equipment and signalling works;
- (b) ramps, means of access and footpaths;
- (c) embankments, aprons, abutments, retaining walls, wing walls and culverts;
- (d) works to install or alter the position of apparatus, including mains, sewers, drains and cables;
- (e) partial demolition of the Zig Zag Viaduct attached to the 1830 Viaduct, the construction of a buttress wall and partial replacement of demolished arches;
- (f) removal of Prince's Bridge and the Girder Bridge over the River Irwell;
- (g) the demolition of two industrial units comprising the former Saab garage on Elm Street known as the Big Yellow site; and
- (h) temporary works in the River Irwell in connection with the construction of Works Nos. 1 and 5.

(4) Subject to paragraph (5), Network Rail may carry out such other works (of whatever nature) as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the authorised works, other than (except as provided by article 20 (temporary interference with river and waterway)) works that would interfere with a navigable watercourse.

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

- (a) land specified in columns (1) and (2) of Schedule 2 (acquisition of land for ancillary works) for the purpose specified in column (3) of that Schedule;
 - (b) land specified in column (1) of Schedule 8 (land in which only new rights etc. may be acquired) for the purposes specified in column (2) of that Schedule; or
 - (c) land specified in columns (1) and (2) of Schedule 10 (land of which temporary possession may be taken) for the purposes specified in column (3) of that Schedule and in relation to the authorised works specified in column (4) of that Schedule.
- (6) Network Rail may, within the Order limits—
- (a) carry out and maintain landscaping and other works to mitigate any adverse effects of the construction, maintenance and operation of the authorised works (other than works authorised by this paragraph); and
 - (b) carry out and maintain works for the benefit or protection of land affected by the authorised works (other than works authorised by this paragraph).

Power to deviate

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

- (a) deviate laterally from the lines or situations shown on the works plans to the extent of the limits of deviation for that work; and
- (b) deviate vertically from the levels shown on the sections—
 - (i) to any extent upwards not exceeding 0.5 metres in relation to Works Nos. 1 to 3 and 3 metres in relation to Works Nos. 4 and 5; or
 - (ii) to any extent downwards as may be found to be necessary or convenient.

Streets

Power to alter layout etc. of streets

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

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

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

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

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

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

Power to execute street works

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

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

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

Stopping up of streets

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

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

- (a) the new street to be constructed and substituted for it, which is specified in column (4) of that Schedule, has been constructed and completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and subsequently maintained by Network Rail, to the

reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).

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

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

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

Temporary stopping up of streets

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

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

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

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

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

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

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

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

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

Construction and maintenance of new or altered streets

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

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

months from its completion and from the expiry of that period by and at the expense of the street authority.

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

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

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

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

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

(6) Nothing in this article—

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

Access to works

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

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

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

Agreements with street authorities

- 15.—(1) A street authority and Network Rail may enter into agreements with respect to—
- (a) the construction of any new street (including any structure carrying the street over or under a railway) under the powers conferred by this Order;
 - (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
 - (c) the maintenance of the structure of any bridge constructed under the powers conferred by this Order;
 - (d) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
 - (e) the execution in the street of any of the works referred to in article 10(1) (power to execute street works).
- (2) Such an agreement may, without limitation on the scope of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question; and
 - (b) contain such terms as to payment and otherwise as the parties consider appropriate.

Construction of bridges

- 16.—(1) Any bridge to be constructed under this Order for carrying a highway over or under a railway must be constructed in accordance with the plans and specifications approved by the highway authority (such approval not to be unreasonably withheld).
- (2) If within 28 days of receiving an application for approval under paragraph (1) a highway authority fails to notify Network Rail of its decision or refuses approval without giving any grounds for its refusal that highway authority is deemed to have granted approval.

Supplemental powers

Discharge of water

- 17.—(1) Network Rail may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised works and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.
- (2) Any dispute arising from the making of connections to or the use of a public sewer or drain by Network Rail under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(22).
- (3) Network Rail must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.
- (4) Network Rail must not make any opening into any public sewer or drain except—
- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and
 - (b) where that person has been given the opportunity to supervise the making of the opening.

(22) 1991 c. 56. Section 106 was amended by sections 35(1) and (8) and 43(2) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43), sections 36(2) and 99 of the Water Act 2003 (c. 37) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c. 29).

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

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

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2010⁽²³⁾.

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

(9) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board, or a local authority; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991⁽²⁴⁾ have the same meaning as in that Act.

Protective works to buildings

18.—(1) Subject to the following provisions of this article, Network Rail may at its own expense carry out such protective works to any building lying within plots 13A and 28A to 28E as Network Rail considers 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 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 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 Network Rail may (subject to paragraph 5) enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building Network Rail may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, 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;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

⁽²³⁾ S.I. 2010/675.

⁽²⁴⁾ 1991 c. 57.

Network Rail must, except in the case of emergency, serve on the owners and occupiers of the building or land 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 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 to be referred to arbitration under article 44 (arbitration).

(7) Network Rail must compensate the owners and occupiers of any building or land 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 rights.

(8) Where—

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

Network Rail must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Without affecting article 43 (no double recovery) nothing in this article relieves Network Rail from any liability to pay compensation under section 10(2)(25) (further provision as to compensation for injurious affection) of the 1965 Act .

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

(11) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building 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 by the construction, maintenance or operation of the authorised works.

Power to survey and investigate land

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

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

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

(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 Network Rail—

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

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

- (a) under paragraph (4)(a) in the case of a highway authority; or
- (b) under paragraph (4)(b) in the case of a street authority,

that authority is deemed to have granted consent.

Temporary interference with river and waterway

20.—(1) Without limitation on the scope of the powers conferred by article 7 (power to construct and maintain works), and subject to Part 4 (for the protection of the Manchester Ship Canal Company Limited) and Part 5 (for the protection of the Canal & River Trust) of Schedule 12 (protective provisions) Network Rail may in connection with the construction of the authorised works—

- (a) temporarily interfere with the river or the waterway, by constructing or maintaining temporary works at any point within the Order limits as it considers necessary or expedient;
- (b) temporarily moor or anchor barges or other vessels or craft in the river or the waterway, load or unload into and from such barges, other vessels or craft equipment, machinery, soil and any other materials in connection with the construction of the authorised works; and
- (c) temporarily close any part of the river or the waterway within the Order limits to navigation.

(2) The power conferred by paragraph (1)(c) must be exercised in a way which secures—

- (a) that no more of the river or the waterway is closed to navigation at any time than is necessary in the circumstances; and
- (b) that if complete closure of a part of the river or the waterway to navigation becomes necessary, all reasonable steps are taken to secure that the minimum obstruction, delay or interference is caused to vessels or craft which may be using or intending to use it.

(3) Any person who, as a result of the exercise of powers conferred by this article, suffers loss by reason of the interference with any private right of navigation is entitled to compensation to be paid by Network Rail to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) In this article—

- (a) “the river” means the River Irwell; and
- (b) “the waterway” means the Manchester, Bolton and Bury Canal.

(5) During any period of interference or temporary closure referred to in paragraph (1), all rights of navigation and other rights relating to, and any obligations of—

- (a) the Manchester Ship Canal Company Limited to manage the part of the river so interfered with or closed; or
- (b) the Canal & River Trust to manage the part of the waterway so interfered with or closed,

are suspended and unenforceable against the Manchester Ship Canal Company Limited in respect of the river and the Canal & River Trust in respect of the waterway.

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

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

- (a) so much of the land shown on the land plans as lying within the limits of deviation and described in the book of reference as may be required for the purposes of the authorised works; and
- (b) so much of the land specified in columns (1) and (2) of Schedule 2 (acquisition of land for ancillary works) (being land shown on the land plans and described in the book of reference) as may be required for the purpose specified in relation to that land in column (3) of that Schedule,

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

(2) This article is subject to paragraph (3) of article 24 (power to acquire new rights) and paragraph (8) of article 27 (temporary use of land for construction of works) and does not apply to plots 13A and 28A to 28E .

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 Acquisition of Land Act 1981(26) 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(27) applies as if this Order were a compulsory purchase order.

(26) 1981 c. 67.

(27) 1981 c. 66.

(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) substitute—

“(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)” substitute “(1)” and after “given” insert “and published”.

(5) In that section, for subsections (5) and (6) substitute—

“(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” insert “in a local newspaper circulating in the area in which the land is situated”; and
- (b) omit subsection (2).

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

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 are to be 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) Subject to paragraph (3) Network Rail may acquire compulsorily such easements or other rights over any land which it is authorised to acquire under article 21 (power to acquire land) as may be required for any purpose for which that land may be acquired under that provision, by creating them as well as by acquiring easements or other rights already in existence.

(2) Network Rail may impose restrictive covenants affecting any part of the Order land which is or will, on completion of the authorised works, lie beneath or adjoin any bridge or viaduct comprised in Works Nos. 1, 2 or 3 as may be required for the purpose of protecting the authorised works.

(3) In the case of the Order land specified in column (1) of Schedule 8 (land in which only new rights etc. may be acquired) Network Rail’s powers of compulsory acquisition are limited to the acquisition of such new rights as may be required for the purpose specified in relation to that land in column (2) of that Schedule or the imposition of restrictive covenants in accordance with paragraph (2).

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

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

(6) In any case where the acquisition of new rights under paragraph (1) or the imposition of restrictive covenants under paragraph (2) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker Network Rail may, with the consent of the Secretary of State, transfer the power to acquire such rights or impose such covenants to the statutory undertaker in question.

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

Power to acquire subsoil or air-space only

25.—(1) Network Rail may acquire compulsorily so much of, or such rights in, the subsoil of or the air-space over the land referred to in paragraph (1) (a) or (b) of article 21 (power to acquire land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

(3) Paragraph (2) does not prevent article 31 (acquisition of part of certain properties) from applying where Network Rail acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Rights under or over streets

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

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

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

(a) any subway or underground building; or

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

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

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

Temporary possession of land

Temporary use of land for construction of works

- 27.—(1) Network Rail may, in connection with the carrying out of the authorised works—
- (a) enter on and take temporary possession of—
 - (i) the land specified in columns (1) and (2) of Schedule 10 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the authorised works specified in column (4) of that Schedule; and
 - (ii) subject to paragraph (11), any other Order land in respect of which no notice of entry has been served under section 11(28) (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 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; and
 - (d) construct any permanent works specified in relation to that land in column (3) of Schedule 10 or any mitigation works on that land.
- (2) Not less than 28 days before entering on and taking temporary possession of land under this article Network Rail must serve notice of the intended entry on the owners and occupiers of the land.
- (3) Network Rail may not, without the agreement of the owners of the land, remain in possession of any land under this article—
- (a) in the case of land specified in paragraph (1)(a)(i) after the end of the period of one year beginning with the date of completion of the work specified in relation to that land in column (4) of Schedule 10; or
 - (b) in the case of land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of this land was taken unless Network Rail has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981.
- (4) Before giving up possession of land of which temporary possession has been taken under this article, Network Rail must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but Network Rail is not be required to—
- (a) replace a building removed under this article;
 - (b) restore the land on which any works have been constructed under paragraph (1)(d); or
 - (c) remove any ground strengthening works which have been placed in that land to facilitate construction of the authorised works.
- (5) Network Rail must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.
- (6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(28) As amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1) and S.I. 2009/1307.

(7) Without affecting article 43 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2)(**29**) (further provision as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5).

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

- (a) acquiring new rights or imposing restrictive covenants over any part of that land under article 24 (power to acquire new rights); or
- (b) acquiring any part of the subsoil of or air-space over (or rights in the subsoil of or air-space over) that land under article 25 (power to acquire subsoil or airspace only).

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

(10) Section 13(**30**) (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of article 22 (application of Part 1 of the 1965 Act).

(11) Paragraph (1)(a)(ii) does not authorise Network Rail to take temporary possession of any land which it is not authorised to acquire under article 21 (power to acquire land) or any land specified in Schedule 8 (land in which only new rights etc. may be acquired).

Temporary use of land for maintenance of works

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

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

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

- (a) any house or garden belonging to a house;
- (b) any building (other than a house) if it is for the time being occupied; or
- (c) plots 8, 13A and 28A to 28E.

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

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

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

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

(30) As amended by sections 62(3) and 139 of, and paragraphs 27 and 28 of Schedule 13, and Part 3 of Schedule 23, to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

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

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

(8) Without affecting article 43 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2) (further provision as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

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

(10) Section 13 (refusal to give possession to the acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of article 22 (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. 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.

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) or the imposition of restrictive covenants, under article 24 (power to acquire new rights), the tribunal must set off against the value of the rights so acquired or restrictive covenants so imposed—

- (a) any increase in value of the land over which the new rights are acquired or restrictive covenants are imposed; and
- (b) any increase in the 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) (other provisions as to divided land) 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 so applied) in respect of land forming part only of a house, building or manufactory, or part only 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 Network Rail 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 Network Rail agrees to take the land subject to the counter-notice, to be referred to the tribunal.

(5) If on such a reference the tribunal determines 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) where the land subject to the notice to treat forms 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 determines 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) where the land subject to the notice to treat forms 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 determines 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 Network Rail is authorised to acquire compulsorily under this Order.

(8) If Network Rail agrees to take the land subject to the counter-notice, or if the tribunal determines 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 Network Rail is authorised to acquire compulsorily under this Order.

(9) Where by reason 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, Network Rail may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, in that event, 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 part only of a house, building or manufactory, or part only of land consisting of a house with a park or garden, Network Rail 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 paragraph (6), all private rights of way over land subject to compulsory acquisition under this Order are extinguished—

(a) as from the date of acquisition of the land by Network Rail, whether compulsorily or by agreement; or

(b) on the date of entry on the land by Network Rail under section 11(1) of the 1965 Act, whichever is the sooner.

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

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

(a) as from the date of the acquisition of the right or the benefit of the restrictive covenant by Network Rail, whether compulsorily or by agreement; or

(b) on the date of entry on the land by Network Rail under section 11(1) of the 1965 Act, whichever is the sooner.

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

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

(6) This article does not apply in relation to any right of way to which section 271 or 272(31) of the 1990 Act (extinguishment of rights of statutory undertakers etc.) or paragraph 2 of Schedule 11 (provisions relating to statutory undertakers etc.) applies.

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

(a) any notice given by Network Rail before—

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

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

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

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

Time limit for exercise of powers of acquisition

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

- (a) no notice to treat is to be served under Part 1 of the 1965 Act as applied to the acquisition of land by article 22 (application of part 1 of the 1965 Act); and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the Compulsory Purchase (Vesting Declarations) Act 1981(32) 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 Network Rail remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

PART 4

MISCELLANEOUS AND GENERAL

Defence to proceedings in respect of statutory nuisance

34.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(33) in relation to a nuisance falling within paragraph (g) of section 79(1)(34) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order is to be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—

(32) 1981 c. 66.

(33) 1990 c. 43. Section 82 was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c. 40) and paragraph 6 of Schedule 17 to the Environment Act 1995 (c. 25).

(34) Section 79(1) was amended by section 2(2) of the Noise and Statutory Nuisance Act 1993, section 120 of, and paragraph 2(a) of Schedule 17 and paragraph 89(2) of Schedule 22 to, the Environment Act 1995, sections 101(2) and 102(2) of the Clean Neighbourhoods and Environment Act 2005 (c. 16) and sections 109(2), 110(2), 111(2) and 112(2)(a) of the Public Health etc. (Scotland) Act 2008 (asp. 5).

- (i) relates to premises used by Network Rail for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to the authorised works and that the nuisance is attributable to the carrying out of the authorised works in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or section 65 (noise exceeding registered level), of the Control of Pollution Act 1974⁽³⁵⁾; or
- (ii) is a consequence of the operation of the authorised works and that it cannot reasonably be avoided.

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

Power to lop trees overhanging the authorised works

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

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

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

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

Power to operate and use railway

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

(2) Nothing in this Order, or in any enactment incorporated with or applied by this Order, affects the operation of Part 1 (the provision of railway services) of the Railways Act 1993⁽³⁶⁾.

Certain land to be treated as operational land

37. Planning permission which is deemed by a direction under section 90(2A)⁽³⁷⁾ of the 1990 Act to be granted in relation to the authorised works is to be treated as specific planning permission for the purposes of section 264(3)(a) of that Act (cases in which land is to be treated as operational land for the purposes of that Act).

⁽³⁵⁾ 1974 c. 40. Section 61 was amended by Schedule 7 to the Building Act 1984 (c. 55), paragraph 15(3) of Schedule 15 to the Environmental Protection Act 1990 (c. 43), Schedule 24 to the Environment Act 1995 and paragraph 10 of Schedule 6 to the Building (Scotland) Act 2003 (asp. 8). Section 65 was amended by paragraph 15(4) of Schedule 15 to the Environmental Protection Act 1990 and Schedule 24 to the Environment Act 1995.

⁽³⁶⁾ 1993 c. 43.

⁽³⁷⁾ Section 90(2A) was inserted by section 16(1) of the Transport and Works Act 1992 (c. 42).

Disclosure of confidential information

38. A person who—

- (a) enters a factory, workshop or workplace in pursuance of the provisions of article 18 (protective works to buildings) or article 19 (power to survey and investigate land); and
- (b) discloses to any person any information obtained as a result of that entry and relating to any manufacturing process or trade secret,

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

Statutory undertakers etc.

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

Certification of plans etc.

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

Service of notices

41.—(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(**38**) 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.

(38) 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 part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

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

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

(a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and

(b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

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

Protection of interests

42. Schedule 12 (protective provisions) has effect.

No double recovery

43. 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

44. 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 the authority of the Secretary of State

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

31st March 2015

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SCHEDULES

SCHEDULE 1

Article 2

SCHEDULED WORKS

In the metropolitan districts of the City of Manchester and the City of Salford

Work No. 1 — A railway comprising an elevated chord, 1,183 metres in length, commencing at a point on the Bolton Lines railway (on the existing Castlefield Manchester, South Junction & Altrincham Railway viaduct (“Castlefield MSJ&AR viaduct”)) 21 metres north-west of the bridge carrying that railway over Potato Wharf, passing north-west over Water Street, the 1830 Viaduct, Prince’s Bridge (to be removed), the River Irwell and over the Trinity Way, tying into the east side of the existing Middlewood Liverpool & Manchester Railway viaduct (“Middlewood L&MR viaduct”) carrying the Chat Moss Lines and terminating at a point on that railway 20 metres north-east of Bury Street.

Work No. 1 includes—

- (i) a viaduct including a bridge over the River Irwell, a bridge over Water Street replacing the existing single span Cast Iron bridge and a new deck on the Middlewood L&MR viaduct at DSE 146(19A) and partial demolition of the viaduct where the new chord ties in;
- (ii) widening of the Castlefield MSJ&AR viaduct on its north-eastern side;
- (iii) strengthening and overstraddling of the existing 1830 Viaduct;
- (iv) widening of the Middlewood L&MR viaduct on its eastern side; and
- (v) placing of piers of the proposed viaduct and safety barriers in Trinity Way and the placing of bridge abutments in Water Street.

Work No. 2 — A railway 300 metres in length, being a realignment of the Bolton Lines railway commencing at a point on that railway 20 metres south-east of Potato Wharf passing north-westwards and terminating at a point 21 metres south-east of Trinity Way.

Work No. 2 includes the widening of the Castlefield MSJ&AR viaduct on its south-west side and a bridge over Water Street replacing the existing single span Cast Iron bridge.

Work No. 3 — A railway 914 metres in length being a realignment of the Chat Moss Lines railway commencing on that railway at a point north of Trinity Way passing north-eastwards and terminating 43 metres south-west of Bury Street.

Work No. 3 includes the widening of the existing Middlewood L&MR viaduct on its north-western side and a new deck over the existing arch at DSE 146(19A).

In the metropolitan districts of the City of Manchester and the City of Salford

Work No. 4 — A bridge to carry a footpath and cycle track over the River Irwell (being a replacement for Prince’s Bridge) commencing at a point on Water Street and terminating at a point on Trinity Way.

Work No. 5 — A bridge to carry utility apparatus together with a footpath and cycle track over the River Irwell commencing at a point 39 metres north-west of Water Street and terminating at a point on Trinity Way.

SCHEDULE 2

Articles 7 and 21

ACQUISITION OF LAND FOR ANCILLARY WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on the land plans</i>	<i>(3)</i> <i>Purposes for which land may be acquired</i>
Metropolitan district of the City of Manchester	Plots 41 and 43	Strengthening works and protection of railway
	Plots 60 and 70	Maintenance and protection of railway
	Plot 64	Landscaping environmental mitigation, and preservation and management of structures
Metropolitan district of the City of Salford	Plots 71, 74, 82, 84, 91, 116, 120, 121, 122, 123, 124, 128, 129, 131 and 155	Maintenance and protection of railway
	Plots 79, 101, 102, 117, 118 and 153	Landscaping environmental mitigation and preservation and management of structures
	Plots 141, 201 and 202	Ancillary works and utilities diversions

SCHEDULE 3

Article 9

STREETS SUBJECT TO ALTERATION OF LAYOUT

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to alteration of layout</i>	<i>(3)</i> <i>Description of alteration</i>
Metropolitan district of the City of Manchester	Water Street	Alterations to footways between points S1 and S2
	Liverpool Road	Alterations to footways between points S2 and S3
Metropolitan district of the City of Salford	Trinity Way	Alterations to kerb lines and central reservation between points S4 and S5

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SCHEDULE 4

Article 10

STREETS SUBJECT TO STREET WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to street works</i>
Metropolitan district of the City of Manchester	Water Street Potato Wharf Liverpool Road
Metropolitan district of the City of Salford	Trinity Way Hampson Street

SCHEDULE 5

Article 11

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

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New street to be substituted</i>
Metropolitan districts of the City of Manchester and the City of Salford	Footpath adjoining western side of Prince's Bridge	Between points P1 and P2	Work No. 4
	Hampson Street (Prince's Bridge)	Between points P3 and P4	Work No. 4
Metropolitan district of the City of Salford	Footpath and cycle track between Trinity Way and towing path on north side of River Irwell	Between points P5 and P6	Footpath and cycle track between points P5, P7 and P6

SCHEDULE 6

Article 12

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>
Metropolitan district of City of Manchester	Duke Street	Between points T1 and T2
	Towing path (not on definitive map) at Giants Basin	Between points T3 and T4
	Potato Wharf	Between points T5 and T6
	Woollam Place	Entire length
	Water Street	Within Order limits
	Liverpool Road	Between points T7 and T8
Metropolitan district of the City of Salford	Towing path (not on definitive map) on north-west side of River Irwell	Between points T9 and T10
	Trinity Way	Between points T11 and T12
	Towing path (not on definitive map) on west side of the Manchester Bolton and Bury Canal	Between points T13 and T14
	Towing path (not on definitive map) on east side of the Manchester Bolton and Bury Canal	Between points T15 and T16
	Stanley Street	Within Order limits
	Hampson Street	Between points T17 and T18

SCHEDULE 7

Article 14

ACCESS TO WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Description of access</i>
Metropolitan district of City of Manchester	Widening of existing access to proposed construction compound off Water Street adjacent to north-eastern side of Prince's Bridge
	Widening of existing access from New Elm Road

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(1) <i>Area</i>	(2) <i>Description of access</i>
Metropolitan district of the City of Salford	Widening of existing access off Water Street to proposed construction compound adjacent to north-eastern side of Castlefield Bridge
	Access to be provided to proposed construction compound off Trinity Way to land adjacent to north-western end of Prince's Bridge
	Access to be provided to proposed construction compound off Trinity Way and Irwell Street to land between Stanley Street and Trinity Way
	Access to be provided by existing access of East Ordsall Lane
	Temporary access required to proposed construction compound from Trinity Way
	New access of New Bailey Street
	Access to proposed construction site from Chapel Street

SCHEDULE 8

Articles 7 and 24

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

(1) <i>Number of land shown on the land plans</i>	(2) <i>Purpose for which rights may be acquired</i>
Plots 6, 9, 10, 11, 13, 15, 22A, 24, 27, 59 and 80	Access for construction and maintenance of the authorised works Attachment of equipment to the railway viaduct and maintenance
Plot 23	Attachment of equipment to the railway viaduct and maintenance Diversion of utility apparatus
Plots 8, 14, 26, 130, 137, 160, 165, 203 and 204	Access for construction and maintenance of the authorised works
Plots 17 and 25	Access for construction and maintenance of the authorised works Diversion of utility apparatus
Plots 19, 36, 38, 39, 42, 44, 55, 105 and 140	Diversion of utility apparatus

SCHEDULE 9

Article 24

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or imposition of a restrictive covenant as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973⁽³⁹⁾ 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 “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable”.

(3) For section 58(1)⁽⁴⁰⁾ (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, substitute—

“(1) In determining under section 8(1) or 34(2) of the Compulsory Purchase Act 1965, or section 166(2) of the Town and Country Planning Act 1990 whether—

- (a) a right over or a restrictive covenant affecting land consisting of a house, building or manufactory can be taken or imposed without material detriment or damage to the house, building or manufactory; or
- (b) a right over or a restrictive covenant affecting land consisting of a park or garden belonging to a house can be taken or imposed without seriously affecting the amenity or convenience of the house,

the Upper Tribunal must take into account not only the effect of the acquisition of the right or the imposition of the restrictive covenant but also the use to be made of the right or restrictive covenant proposed to be acquired or imposed, and, in a case where the right or restrictive covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use to be made of the other land.”.

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 read (according to the requirements of the particular context) as referring to, or as including references to—

⁽³⁹⁾ 1973 c. 26.

⁽⁴⁰⁾ Section 58(1) was amended by section 16(3) of, and Schedule 5 to, the Compulsory Purchase (Vesting Declarations) Act 1981 (c. 66), section 4 of, and paragraph 29(1) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2009/1307.

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- (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.

4. For section 7 (measure of compensation) of the 1965 Act 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 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 (other provisions as to divided land) of the 1965 Act there is substituted the following section—

“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 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 land 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 restrictive covenant imposed without seriously affecting the amenity or convenience of the house to which that land belongs,

the Network Rail (Ordsall Chord) Order 2015⁽⁴¹⁾ (“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

(41) S.I. 2015/780.

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notice to treat in consequence of which the determination was made; but nothing in this subsection affects 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);
- (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(42) (powers of entry) of the 1965 Act 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 it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12(43) (penalty for unauthorised entry) and 13(44) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

8. Section 20(45) (protection for interests of tenants at will, etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

9. Section 22 (interests omitted from purchase) of the 1965 Act is modified so as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

(42) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1) and S.I. 2009/1307.

(43) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).

(44) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(45) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 and S.I. 2009/1307.

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SCHEDULE 10

Article 7 and 27

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on the land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised works</i>
Metropolitan district of the City of Manchester	Plots 1, 2, 4 and 5	Worksite and access for construction of the authorised works	Works Nos. 1 and 2
Metropolitan district of the City of Manchester	Plots 6 and 204	Worksite and access for construction of the authorised works	Work No. 1
Metropolitan district of the City of Manchester	Plots 9, 10, 11, 13, 14, 15, 17, 21, 24, 25, 26, 27, 29 and 30	Worksite and access for construction of the authorised works	Works Nos. 1 and 2
Metropolitan district of the City of Manchester	Plots 47, 50, 58 and 59	Worksite and access for construction of the authorised works	Works Nos. 1, 2 and 5
Metropolitan district of the City of Salford	Plots 76, 95 and 98	Worksite and access for construction of the authorised works and construction of a new footpath and cycletrack within plot 95	Works Nos. 1, 2 and 5
Metropolitan district of the City of Manchester	Plots 65, 72 and 73	Worksite and access for construction of the authorised works	Works Nos. 1 and 4
Metropolitan district of the City of Salford	Plots 80, 81, 93, 106, 126, 130, 132 and 137	Worksite and access for construction of the authorised works	Works Nos. 1, 2 and 4
Metropolitan district of the City of Salford	Plots 145, 160, 165, 166, 169, 170, 174, 175, 184 and 203	Worksite and access for construction of the authorised works	Works Nos. 1 and 3

SCHEDULE 11

Articles 32 and 39

PROVISIONS RELATING TO STATUTORY UNDERTAKERS ETC.

1.—(1) Sections 271 to 274⁽⁴⁶⁾ of the 1990 Act (power to extinguish rights of statutory undertakers etc. and power of statutory undertakers etc. to remove or re-site apparatus) apply in relation to any land acquired or appropriated by Network Rail under this Order subject to the

⁽⁴⁶⁾ Sections 272 to 274 were amended by paragraph 103(1) and (2) of Schedule 17 to the Communications Act 2003 (c. 21).

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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(47), which provide for the payment of compensation) have effect accordingly.

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

(3) Where any apparatus of public utility undertakers or of a public communications provider is removed in pursuance of a notice or order given or made under section 271, 272 or 273 of the 1990 Act, as applied by sub-paragraph (1), any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from Network Rail compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

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

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

is entitled to recover from Network Rail compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(5) The provisions of the 1990 Act mentioned in sub-paragraph (1), as applied by that sub-paragraph, do not have effect in relation to apparatus as respects which paragraph 2, or Part 3 of the 1991 Act, applies.

(6) In this paragraph—

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

“public utility undertakers” has the same meaning as in the 1980 Act(48).

Apparatus of statutory undertakers etc. in stopped up streets

2.—(1) Where a street is stopped up under article 11 (stopping up of streets) any statutory utility whose apparatus is under, in, upon, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this paragraph, as if this Order had not been made.

(2) Where a street is stopped up under article 11 any statutory utility whose apparatus is under, in, upon, over, along or across the street may, and if reasonably requested to do so by Network Rail must—

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

(47) Section 279(3) was amended by paragraphs 103(1) and (2), and section 280 was amended by paragraph 104, of Schedule 17 to the Communications Act 2003. Sections 280 and 282 were amended by [S.I. 2009/1307](#).

(48) The definition of “public utility undertakers” was amended by section 190(3) of, and part 1 of Schedule 27 to, the Water Act 1989 (c. 15) and section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c. 29).

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

- (a) the execution of the relocation works required in consequence of the stopping up of the street; and
- (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

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

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

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

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

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

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

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

- (a) the allowable costs of the relocation works are to be determined in accordance with section 85 (sharing of cost of necessary measures) of that Act and any regulations for the time being having effect under that section; and
- (b) the allowable costs are to be borne by Network Rail and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this paragraph—

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

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

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in paragraph 1(6).

SCHEDULE 12

Articles 20 and 42

PROTECTIVE PROVISIONS

PART 1

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

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

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

3. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the undertaker in question to fulfil its statutory functions in a manner 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⁽⁴⁹⁾), belonging to or maintained by that undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the undertaker under the Water Industry Act 1991; 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—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986⁽⁵⁰⁾;
- (c) a water undertaker within the meaning of the Water Industry Act 1991; and
- (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

⁽⁴⁹⁾ 1989 c. 29.

⁽⁵⁰⁾ 1986 c. 44.

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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.

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

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

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

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of Network Rail, or Network Rail is unable to afford such facilities and rights as are mentioned in sub-paragraph (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 Network Rail, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of Network Rail under this Part of this Schedule is to be constructed in such manner and in such line or situation as may be agreed between the undertaker in question and Network Rail or in default of agreement settled by arbitration in accordance with article 44 (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 44, 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 subsequently to remove any apparatus required by Network Rail to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if Network Rail gives notice in writing to the undertaker in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of Network Rail, that work, instead of being executed by the undertaker, must be executed by Network Rail without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the undertaker.

(7) Nothing in sub-paragraph (6) authorises Network Rail to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, Network Rail affords to an undertaker facilities and rights for the construction and maintenance in land of Network Rail of alternative apparatus in substitution for apparatus to be removed, those facilities and rights

are to be granted upon such terms and conditions as may be agreed between Network Rail and the undertaker in question or in default of agreement settled by arbitration in accordance with article 44 (arbitration).

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

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

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

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 Network Rail under paragraph 6(2), Network Rail must submit to the undertaker in question a plan, section and description of the works to be executed.

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

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

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

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

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

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

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that purpose) 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 Part 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 Part of this Schedule—

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by Network Rail or, in default of agreement, is not determined by arbitration in accordance with article 44 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

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

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

(5) An amount which apart from this sub-paragraph would be payable to an undertaker in respect of works under sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such 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 Network Rail must—

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

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

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

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

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

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

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

(2) In this Part of this Schedule—

“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 communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act⁽⁵¹⁾;

“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.

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

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

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

- (i) make reasonable compensation to an operator for loss sustained by it; and
- (ii) indemnify an operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, an operator by reason, or in consequence, of any such damage or interruption.

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

⁽⁵¹⁾ See section 106.

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

(4) Any difference arising between Network Rail and the operator under this paragraph is to be referred to and settled by arbitration under article 44 (arbitration).

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

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

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

PART 3

FOR THE PROTECTION OF LEAD LOCAL FLOOD AUTHORITIES

16.—(1) The following provisions of this Part of this Schedule apply for the protection of the lead local flood authority unless otherwise agreed in writing between Network Rail and the lead local flood authority.

(2) In this Part of this Schedule—

“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 ordinary watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence;

“lead local flood authority” means in relation to an ordinary watercourse the lead local flood authority concerned within the meaning of section 23 of the Land Drainage Act 1991⁽⁵²⁾;

“ordinary watercourse” has the meaning given by the Land Drainage Act 1991;

“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 affect any drainage work.

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

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the lead local flood authority, or determined under paragraph 24.

(3) Any approval of the lead local flood authority required under this paragraph—

- (a) must not be unreasonably withheld or delayed and must not be withheld in respect of a design which accords with the design drawings;

⁽⁵²⁾ 1991 c.59. Section 23 was amended by section 120 of, and paragraph 192 of Schedule 22 to, the Environment Act 1995 (c. 25), paragraphs 25 and 32 of Schedule 2 to the Flood and Water Management Act 2010 (c. 29) and S.I. 2013/755.

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- (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, or submission of further particulars if required by the lead local flood authority under sub-paragraph (1), 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 lead local flood authority may make for the protection of any drainage work.

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

18. Without limitation on the scope of paragraph 17, the requirements which the lead local flood authority may make under that paragraph include conditions requiring Network Rail at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

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

19.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the lead local flood authority under paragraph 18, must be constructed—

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

and an officer of the lead local flood authority is entitled to watch and inspect the construction of such works.

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

(3) If any part of a specified work or any protective work required by the lead local flood authority is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the lead local flood authority may by notice in writing require Network Rail at Network Rail's own expense to comply with the requirements of this Part of this Schedule.

20.—(1) Subject to sub-paragraph (3) Network Rail must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation on land held by Network Rail for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

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

(3) This paragraph does not apply to—

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

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

22. Network Rail must pay all costs, charges and expenses which the lead local flood authority may reasonably incur or have to pay—

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

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

24. Any dispute arising between Network Rail and the lead local flood authority under this Part of this Schedule, if the parties agree, is to be determined by arbitration under article 44 (arbitration).

PART 4

FOR THE PROTECTION OF THE MANCHESTER SHIP CANAL COMPANY LIMITED

25.—(1) For the protection of the Manchester Ship Canal Company Limited the following provisions of this Part of this Schedule, unless otherwise agreed in writing between Network Rail and MSCC, have effect.

(2) In this Part of this Schedule—

“construction”, in relation to any specified work or protective work, includes execution, placing, altering, replacing, relaying and removal, and “construct” and “constructed” are construed accordingly;

“detriment” means any physical damage to the River wholly or partly caused by the specified works which affects the stability, structure and safety of the River and, without limitation on the scope of that meaning, includes—

- (a) the erosion of the bed, banks or walls of the River, or the impairment of the stability of any works or lands forming part of the River;
- (b) the silting of the River or the deposit of materials in the River so as to damage the River;
- (c) the pollution of the River; and
- (d) any alteration in the water level of the River, or interference with the supply of water to the River, or drainage from the River;

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“MSCC” means the Manchester Ship Canal Company Limited (company registration number 07438096) whose registered address is at Maritime Centre, Port of Liverpool, Liverpool, Merseyside, L21 1LA, and its statutory successors;

“plans” includes sections, drawings, specifications, calculations, soil reports, descriptions (including descriptions of methods of construction), risk assessments and method statements but does not include the design and appearance of the specified works;

“protective work” means a work which is reasonably necessary to be carried out to minimise or prevent detriment constructed under paragraph 28(3)(a);

“the River” means the River Irwell for which the MSCC is the harbour authority; and

“specified work” means so much of the authorised works as is situated upon, across, under, over or within 15 metres of, or may in any way affect, the River.

26. Network Rail must not under the powers conferred by this Order acquire compulsorily any land of MSCC 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.

27. Where so required by MSCC for the purpose of ensuring the safety of the River, Network Rail must, to the reasonable satisfaction of MSCC, fence off any specified work or protective work or take such steps as MSCC may reasonably require to be taken for the purpose of separating a specified work or a protective work from the River, whether on a temporary or permanent basis or both.

28.—(1) Network Rail must, before commencing construction of any specified work, including any temporary works, supply to MSCC proper and sufficient plans of that work and such further particulars available to it as MSCC may within 14 days of the submission of the plans reasonably require for the reasonable approval, subject to sub-paragraphs (2) and (6), of MSCC and must not commence the construction of any specified work except in accordance with such plans as have been approved or deemed to have been approved or settled by arbitration.

(2) The approval of MSCC under sub-paragraph (1) must not be unreasonably withheld or delayed, and if within 28 days after such plans (including any other particulars reasonably required under sub-paragraph (1)) have been supplied to MSCC they have not intimated disapproval of those plans and the grounds of disapproval MSCC is deemed to have approved the plans as submitted.

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

(a) any protective work to be carried out before the commencement of a specified work (whether temporary or permanent) that may be reasonably required to prevent detriment; and

(b) such other requirements as may be reasonably necessary to prevent detriment but not involving alteration to the design of the specified work,

and such protective work must be constructed by Network Rail or (if Network Rail so elects) MSCC without unnecessary delay and Network Rail must not commence the construction of any specified work until MSCC has notified Network Rail that the protective work has been completed to MSCC’s reasonable satisfaction.

(4) The approval of MSCC under sub-paragraph (3) is not to be unreasonably withheld or delayed, and if by the end of the period of 7 days beginning with the date on which MSCC is notified of the completion of such protective work MSCC has not intimated disapproval and the grounds of disapproval MSCC is deemed to have approved the protective work.

(5) MSCC must at all times afford reasonable facilities to Network Rail and its agents for access to any protective works carried out by MSCC under this paragraph during their construction and must supply Network Rail with such information as it may reasonably require with regard to such protective works or the method of constructing them.

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(6) Where the design of any work is shown on the design drawings, MSCC must not disapprove under sub-paragraph (1) plans for that work which accord with those drawings, although any approval may contain specifications under sub-paragraph (3).

29. Subject to article 20 (temporary interference with river and waterway), Network Rail must not impede, obstruct or interfere with, as far as reasonably practicable, the free, uninterrupted and safe use of the River.

30. Network Rail must provide and maintain at its own expense in the vicinity of any specified work or protective work such temporary lighting from sunset to sunrise or other periods of adverse visibility as MSCC may reasonably require during the construction or failure of the specified work or protective work.

31.—(1) Any specified work must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled by arbitration and with any requirements made under paragraph 28(3)(b);
- (b) under the supervision (if given), and in the case of any specified work which directly and physically affects the River, to the reasonable satisfaction of MSCC;
- (c) in such a manner as to cause as little detriment as is reasonably practicable to the River;
- (d) so far as is reasonably practicable and subject to article 20 (temporary interference with river and waterway), so as not to interfere with, delay or obstruct the safe passage of vessels using the River; and
- (e) in such a manner as to cause as little inconvenience as is reasonably practicable to MSCC, its officers and agents.

(2) Following the completion of the construction of any specified work Network Rail must restore the River to a condition no less satisfactory than its condition immediately prior to the commencement of those works subject to the presence of the works authorised by this Order.

32.—(1) Network Rail must not in the course of constructing any specified work or protective work or otherwise in connection with such works do or permit anything which may result in the deposit of any polluting materials on, in or over the River and must take such steps as MSCC may reasonably require to avoid or make good any breach of its obligations under this paragraph.

(2) Nothing in article 17 (discharge of water) authorises Network Rail to discharge (directly or indirectly) surface drainage water into the River without the written consent of MSCC (such consent not to be unreasonably withheld).

(3) Network Rail must not in the course of constructing any specified work or protective work or otherwise in connection with such works do or permit anything which may result in the deposit of any other materials in the River and must take such steps as MSCC may reasonably require to avoid or make good any breach of its obligations under this paragraph except that with the written consent of MSCC Network Rail may deposit any other materials into the River.

(4) Any consent of MSCC required under this paragraph must not be unreasonably withheld or delayed and may be given subject to such terms and conditions as MSCC may reasonably require including—

- (a) in the case of a discharge of water into the River, concerning the reimbursement by Network Rail of expenses incurred by MSCC in disposing of the water so discharged, being expenses which MSCC would not have incurred but for the discharge; and
- (b) in the case of a deposit of any other materials, so as to ensure that the use of the River is not obstructed or rendered less safe and the reimbursement by Network Rail of additional

expenses incurred by MSCC in dredging the River, being expenses which MSCC would not have incurred but for the deposit of other materials.

33.—(1) Network Rail, on being given reasonable notice (except in cases of emergency), must at all reasonable times allow reasonable facilities to MSCC for access to inspect any specified work during its construction.

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

34.—(1) If any reasonable alterations or additions, either permanent or temporary, to the River are necessary in consequence of the construction of the specified work in order to avoid detriment and MSCC gives to Network Rail reasonable notice (being not less than 28 days) of its intention to carry out such alterations or additions (which must be specified in the notice), and takes into account any reasonable representations Network Rail may make to the notice within 21 days of receipt of the notice, Network Rail must pay to MSCC, provided that 28 days' notice has been given to Network Rail, the cost of those alterations or additions reasonably incurred including, in respect of permanent alterations and additions, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by MSCC in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If the cost of maintaining, working or renewing the River is reduced as a consequence of any such alterations or additions referred to in sub-paragraph (1) a capitalised sum representing such saving is to be set-off against any sum payable by Network Rail to MSCC under sub-paragraph (1).

35.—(1) Network Rail must, upon completion of any part of a specified work and after the purpose of any temporary works has been accomplished, remove as soon as practicable any temporary works constructed and materials for temporary works placed in, on or over the River in connection with that part of the specified work.

(2) All temporary works must be removed to the reasonable satisfaction of MSCC and in such a way as causes as little detriment or interference as reasonably practicable with, or delay or interruption to, the safe passage of vessels along the River.

(3) In the event of any detriment to the River or interference with, or delay or interruption to, any vessels on the River that is caused by Network Rail's failure to remove any such temporary works, Network Rail must immediately make good such damage and pay to MSCC the costs and expenses to which it may be put and compensation for any loss which it may suffer by reason of such detriment, interference, delay or interruption.

(4) In the event of Network Rail failing to remove the temporary works within a reasonable period after receiving notice from MSCC, MSCC may remove those works and charge Network Rail the costs and expenses reasonably incurred as a result.

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

37. Network Rail must repay to MSCC all costs, charges and expenses reasonably and properly incurred by MSCC—

- (a) in constructing any protective work under the provisions of paragraph 28(3)(a) including, in respect of any permanent protective work, a capitalised sum representing the cost of maintaining and renewing those works;

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- (b) in respect of the employment of any inspectors, watchguards and other persons whom it is reasonably necessary to appoint for inspecting, watching and lighting any part of the River affected by any specified work or protective work and for preventing as far as may be practicable all interference, obstruction, danger or accident arising from the construction, maintenance, renewal, repair or failure of the specified work or any protective work;
- (c) in respect of the approval by MSCC of plans submitted by Network Rail and the supervision by MSCC of any specified work or any protective work; and
- (d) in bringing the specified work or any protective work to the notice of users of the River.

38.—(1) If any detriment to the River or any interference with, or delay or obstruction to, any vessels on the River is caused by, or arises as a result of, the construction or failure of any specified work or protective work carried out by Network Rail, Network Rail or (if MSCC so elects) MSCC (but at Network Rail's expense), must immediately make good such detriment and Network Rail must on demand pay to MSCC all reasonable expenses to which MSCC may be put, and compensation for any loss which MSCC may sustain, in making good or otherwise by reason of any such detriment, interference, delay or obstruction.

(2) Network Rail is responsible for and must make good to MSCC all claims, demands, proceedings, costs, charges, damages, expenses and losses not otherwise provided for in this Part of this Schedule or in accordance with paragraph (3) of article 20 (temporary interference with river and waterway) which may be occasioned to or reasonably incurred by MSCC—

- (a) by reason of the construction or failure of any specified work or a protective work;
- (b) by reason of any planned closure of the River, as a result of the construction or failure of any specified work or a protective work, or of any closure which is not in accordance with the provisions of this Part of this Schedule;
- (c) by reason of any planned closure of the River over-running, as a result of the construction or failure of any specified work or a protective work; and
- (d) by reason of any act or omission of Network Rail 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) Network Rail must effectively indemnify and hold harmless MSCC from and against all charges, claims, demands, expenses and liabilities arising out of any of the matters referred to in paragraphs (a), (b), (c) and (d).

(3) Nothing in this paragraph imposes any liability on Network Rail with respect to any losses, costs, charges, damages, expenses, claims or demand referred to in sub-paragraph (2) to the extent that they are attributable to negligence on the part of MSCC or of any person in its employ or its contractors or agents.

(4) The fact that any act or thing may have been done by MSCC on behalf of Network Rail does not (if it was done without negligence on the part of MSCC or any person in its employ or its contractor or agents) excuse Network Rail from any liability under the provisions of this paragraph.

(5) MSCC must give to Network Rail reasonable notice of any such claim or demand and no settlement or compromise of any such claim or demand must be made without the prior consent in writing of Network Rail (which must not be unreasonably withheld) which, if it notifies MSCC that it desires to do so, must have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand provided that no settlement or compromise of any such claim or demand is to be made without the consent of MSCC (which must not be unreasonably withheld). If consent is not given by Network Rail, MSCC must diligently defend such claim or demand.

39. Where under any provision of this Part of this Schedule MSCC or Network Rail (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.

40. Except as provided by this Order, nothing in this Order prejudices or derogates from the estates, rights, interests, privileges, liberties or franchises of MSCC or alters or diminishes any power, authority or jurisdiction vested in MSCC at the making of this Order.

41. Any differences arising between Network Rail and MSCC under this Part of this Schedule (other than a difference as to the meaning or construction of this Part of this Schedule) must be referred to and settled by arbitration in accordance with article 44 (arbitration).

PART 5

FOR THE PROTECTION OF THE CANAL & RIVER TRUST

42.—(1) The following provisions of this Part of this Schedule have effect unless otherwise agreed in writing between Network Rail and the Trust.

(2) In this Part of this Schedule—

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

- (a) the execution and placing of that work; and
- (b) any relaying, renewal or maintenance of that work as may be carried out during the period of 24 months from the completion of that work,

and “construct” and “constructed” are construed accordingly;

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

- (a) any obstruction of, or interference with, or hindrance or danger to, navigation or to any use of the waterway (including towing paths);
- (b) the erosion of the bed or banks of the waterway, or the impairment of the stability of any works, lands or premises forming part of the waterway;
- (c) the deposit of materials or the siltation of the waterway so as to damage the waterway;
- (d) the pollution of the waterway;
- (e) any significant alteration in the water level of the waterway, or significant interference with the supply of water to it, or drainage of water from it;
- (f) any harm to the ecology of the waterway (including any adverse impact on any site of special scientific interest comprised in the Trust’s network); and
- (g) any interference with the exercise by any person of rights over the Trust’s network;

“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;

“practical completion” means practical completion of all of the specified work notwithstanding that items which would ordinarily be considered snagging items remain outstanding, and the expression “practically complete” and “practically completed” are to be construed accordingly;

“protective work” means a work constructed under paragraph 47(3)(a);

“specified work” means so much of any of the authorised works as is situated upon, across, under, over or within 15 metres of the waterway, or may in any way affect the waterway;

“towing path” means the towing path forming part of the waterway;

“the Trust” means the Canal & River Trust;

“the Trust’s network” means the Trust’s network of waterways; and

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“the waterway” means the Manchester, Bolton and Bury Canal, and includes any works, lands or premises belonging to the Trust, or under its management or control, that are held or used by the Trust in connection with that canal.

43.—(1) Network Rail 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, or use any such land, unless such acquisition or use is with the consent of the Trust.

(2) Network Rail must not in the exercise of the powers conferred by this Order obstruct or interfere with pedestrian or vehicular access to the waterway unless such obstruction or interference with such access is with the consent of the Trust.

(3) Network Rail must not exercise the powers conferred by article 12(1) (temporary stopping up of streets) in relation to any way over land comprised in the waterway unless such exercise is with the consent of the Trust.

(4) Nothing in article 20 (temporary interference with river and waterway) authorises Network Rail—

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

except with the consent of the Trust and on terms that the Trust may reasonably require, and in accordance with plans approved by, and under the supervision (if given) of the engineer.

(5) Network Rail must not exercise any power conferred by this Order in such a way as to interfere with the supply of water to or the drainage of water from the waterway unless such exercise is with the consent of the Trust.

(6) Network Rail must not exercise the powers conferred by article 19 (power to survey and investigate land) and the powers conferred by article 20, or section 11(3) (powers of entry) of the 1965 Act in relation to the waterway unless such exercise is with the consent of the Trust.

(7) The consent of the Trust under sub-paragraphs (1) to (6) and the approval of plans under sub-paragraph (4) must not be unreasonably withheld or delayed but may be given subject to reasonable terms and conditions which in the case of article 17 (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 Network Rail to require Network Rail to suspend the discharge of water or reduce the flow of water where this is necessary by reason of any operational or environmental requirement of the Trust.

44. Network Rail must not use any land or property of the Trust forming part of the waterway for the passage or siting of vehicles, plant or machinery employed in the construction of a 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,

but nothing in this paragraph applies in relation to anything done in accordance with any approval given by the Trust under paragraph 47.

45. Where so required by the engineer Network Rail must to the reasonable satisfaction of the engineer fence off a specified work or a 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 waterway, whether on a temporary or permanent basis.

46.—(1) Before the commencement of the initial construction of any part of the specified work and again following practical completion of the specified work Network Rail must bear the reasonable cost of the carrying out by a qualified engineer (“the surveyor”), to be approved by the Trust and Network Rail, of a survey (including a dip-survey to measure the depth of the waterway and a survey to measure the headroom of the existing road bridge over the waterway) (“the survey”) of so much of the waterway and of any land and works of Network Rail in existence at the date of the coming into force of this Order which may provide support for the waterway as will or may be affected by the specified works.

(2) For the purposes of the survey Network Rail must—

- (a) on being given reasonable notice (except 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 Network Rail which may provide support for 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 the surveyor may reasonably require with regard to such existing works of Network Rail and to the specified works or the method of their construction.

(3) The reasonable costs of the survey must include the costs of any dewatering or reduction of the water level of any part of the waterway (where reasonably required) which may be effected to facilitate the carrying out of the survey and the provisions of this Part of this Schedule apply with all necessary modifications to any such dewatering or reduction in the water level as though those measures were specified works.

(4) Copies of the report of the survey must be provided to both the Trust and Network Rail at no cost to the Trust.

47.—(1) Network Rail 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 a 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 must not be withheld in respect of a design which accords with the design drawings, 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 approval of the plans the engineer may specify—

- (a) any protective work (whether temporary or permanent) which in the reasonable opinion of the engineer should be carried out before the commencement of a specified work to prevent detriment; and
- (b) such other requirements as may be reasonably necessary to prevent detriment,

and such protective works must be constructed by Network Rail or by the Trust at Network Rail’s request with all reasonable dispatch and Network Rail must not commence the construction of a specified work until the engineer has notified Network Rail that the protective works have been completed to the engineer’s reasonable satisfaction.

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48. Without affecting its obligations under the provisions of this Part of this Schedule Network Rail must consult, collaborate with and respond constructively to any approach, suggestion, proposal or initiative made by the Trust on—

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

and must have regard to such views as may be expressed by the Trust, to the extent that these accord with the design drawings and 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⁽⁵³⁾ and to the interest of the Trust in preserving and enhancing the environment of its waterways.

49. Network Rail must give to the engineer 56 days' notice of its intention to commence the construction of any of the specified 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 Trust's network.

50. Network Rail must provide and maintain at its own expense in the vicinity of the specified or protective works 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 or protective works.

51.—(1) Any specified or protective 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 Part of this Schedule and with any requirements made under paragraph 47(3) and paragraph 48;
- (b) under the supervision (if given) and 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 waterway, except to the extent that temporary obstruction has otherwise been agreed by the Trust.

(2) Nothing in this Order authorises Network Rail to make or maintain any permanent works in or over the waterway which will reduce the dimensions of the waterway or prevent the passage of any vessel which is at the date of this Order able to navigate along the waterway.

(3) Following the completion of the construction of the specified works Network Rail must restore the waterway to a condition no less satisfactory than its condition immediately prior to the commencement of those works.

52. Network Rail must not in the course of constructing a specified work or a protective work or otherwise in connection with those works do or permit anything which may result in the pollution 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.

53.—(1) Network Rail on being given reasonable notice must—

- (a) at all times allow reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

(53) 1995 c. i.

- (2) The Trust on being given reasonable notice must—
- (a) at all times afford reasonable facilities to Network Rail and its agents for access to any works carried out by the Trust under this Part of this Schedule during their construction; and
 - (b) supply Network Rail with such information as it may reasonably require with regard to such works or the method of constructing them and Network Rail must reimburse the Trust's reasonable costs in relation to the supply of such information.

54. If at any time after the completion of a specified work or a protective work, not being a work vested in the Trust, the Trust gives notice to Network Rail informing it that the state of maintenance of the work appears to be such that the work is causing or likely to cause detriment, Network Rail 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.

55. Network Rail must repay to the Trust all fees, costs, charges and expenses reasonably incurred by the Trust—

- (a) in constructing any protective works under paragraph 47(3)(a);
- (b) in respect of the approval by the engineer of plans submitted by Network Rail and the supervision by the engineer of the construction or repair of a specified work and any protective works;
- (c) in respect of the employment during the construction of the specified works or any protective works of any inspectors, watchkeepers and other persons whom it is reasonably necessary to appoint for inspecting, watching and lighting any 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 works or any protective works; and
- (d) in bringing the specified works or any protective works to the notice of users of the Trust's network.

56.—(1) If any detriment is caused by the construction or failure of the specified works or the protective works carried out by Network Rail, Network Rail (if so required by the Trust) must make good such detriment and 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) Network Rail is responsible for and must make good to the Trust all costs, charges, damages, expenses and losses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by the Trust—

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

and subject to sub-paragraph (4) Network Rail must effectively indemnify and hold harmless the Trust from and against all claims and demands arising out of or in connection with 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 Network Rail 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

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employ or of its contractors or agents) excuse Network Rail from any liability under the provisions of this paragraph.

(4) The Trust must give Network Rail 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 Network Rail.

57. Any difference arising between Network Rail and the Trust under this Part of this Schedule (other than a difference as to the meaning or construction of the Part of this Schedule) is to be referred to and settled by arbitration in accordance with article 44 (arbitration).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Network Rail Infrastructure Limited to construct and maintain a new chord railway, linking the Castlefield Junction line with the Chat Moss lines in the Ordsall area of Greater Manchester, including alterations to existing railway infrastructure. The new railway will provide a direct link between the three main stations in Manchester (Victoria, Oxford Road and Piccadilly) and will enable trains from the east of England to reach Manchester Airport without crossing the West Coast Main Line to the south of Manchester Piccadilly. The Order authorises the acquisition of land and rights in land, and the use of land, for this purpose.

Copies of the land plans, the works plans, the sections and the book of reference referred to in the Order may be inspected at the offices of the Company Secretary and Solicitor to Network Rail Infrastructure Limited at 1 Eversholt Street, London, NW1 2DN.