
STATUTORY INSTRUMENTS

2017 No. 830

TRANSPORT AND WORKS, ENGLAND
TRANSPORT, ENGLAND

The London Overground (Barking
Riverside Extension) Order 2017

Made - - - - 15th August 2017

Coming into force - - 5th September 2017

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 and 5 of the Transport and Works Act 1992(2) (“the 1992 Act”).

The Secretary of State caused an inquiry to be held for the purposes of the application 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The Secretary of State, having considered the objections made and not withdrawn, and the report of the person who held the inquiry, has determined to make an Order giving effect to the proposals comprised in the application with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 14th August 2017.

The Secretary of State, in exercise of the powers conferred by sections 1 and 5 of, and paragraphs 1 to 5, 7, 8, 10, 11 and 15 to 17 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 London Overground (Barking Riverside Extension) Order 2017 and comes into force on 5th September 2017.

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

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 1984 Act” means the Road Traffic Regulation Act 1984⁽⁶⁾;
- “the 1990 Act” means the Town and Country Planning Act 1990⁽⁷⁾;
- “the 1991 Act” means the New Roads and Street Works Act 1991⁽⁸⁾;
- “the 2004 Act” means the Traffic Management Act 2004⁽⁹⁾;
- “address” includes any number or address used for the purposes of electronic transmission;
- “the authorised railway” means the railway forming part of the authorised works;
- “the authorised works” means the scheduled works and any other works or operations 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 same meaning as in the 1980 Act⁽¹⁰⁾;
- “the deposited plans” means the plans certified by the Secretary of State as the deposited plans for the purposes of this Order;
- “the deposited sections” means the sections certified by the Secretary of State as the deposited sections for the purposes of this Order;
- “electronic transmission” means a communication transmitted—
- (a) by means of an electronic communications network; or
 - (b) by other means but while in electronic form;
- “environmental statement” means the environmental statement certified by the Secretary of State as the environmental statement for the purposes of this Order;
- “footway” has the same meaning as in the 1980 Act;
- “highway” and “highway authority” have the same meaning as in the 1980 Act;
- “the limits of deviation and of land to be acquired or used” means the various limits of deviation for the scheduled works so shown and described on the deposited plans and the limits mentioned in article 5(1)(b) (power to deviate);
- “the limits of land to be used only temporarily” means the limits so shown and described on the deposited plans;
- “maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace, and “maintenance” is to be construed accordingly;

(3) 1961 c. 33.

(4) 1965 c. 56.

(5) 1980 c. 66.

(6) 1984 c. 27.

(7) 1990 c. 8.

(8) 1991 c. 22.

(9) 2004 c. 18.

(10) The definition of “cycle track” (in section 329(1) of the 1980 Act) was amended by section 1 of the Cycle Tracks Act 1984 (c. 38) and paragraph 21(2) of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c. 54).

“the Order limits” means the limits of deviation and of land to be acquired or used and the limits of land to be used only temporarily;

“owner”, in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981⁽¹¹⁾;

“parking place” has the same meaning as in section 32 (power of local authorities to provide parking places) of the 1984 Act;

“public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board, a local authority or a harbour authority within the meaning of the Harbours Act 1964⁽¹²⁾;

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

“street” includes part of a street;

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

“TfL” means Transport for London whose head office is Windsor House, 42–50 Victoria Street, London SW1H 0TL;

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

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

“watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows (whether or not the flow is intermittent), except a public sewer or drain.

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the airspace above its surface.

(3) Any reference in this Order to a work identified by the number of the work is to be construed as a reference to the work of that number authorised by this Order.

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

(5) References in this Order to points identified by letters and numbers are to be construed as references to the points marked on the deposited plans and the traffic regulation plans.

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

Application, modification and exclusion of legislative provisions relating to street works

3.—(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) (which defines what highway authority works are major highway works) of that Act; or

⁽¹¹⁾ 1981 c. 67. The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1992 (c. 34). There are other amendments to section 7 which are not relevant to this Order.

⁽¹²⁾ 1964 c. 40.

(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(13) (dual carriageways and roundabouts) of the 1980 Act or section 184 (vehicle crossings) of that Act.

(2) In Part 3 of the 1991 Act references, in relation to major highway works, to the highway authority concerned are, in relation to works which are major transport works by virtue of paragraph (1), to be construed as references to TfL.

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

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

(4) The provisions of the 1991 Act mentioned in paragraph (5) which, together with other provisions of that Act, apply in relation to the execution of street works and any regulations made, or code of practice issued or approved under, those provisions apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by TfL under the powers conferred by article 10 (temporary stopping up and diversion of streets) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act(14) referred to in paragraph (4) are—

- section 54(15) (advance notice of certain works) subject to paragraph (6);
- section 55(16) (notice of starting date of works) subject to paragraph (6);
- section 57(17) (notice of emergency works);
- section 59(18) (general duty of street authority to co-ordinate works);
- section 60 (general duty of undertakers to co-operate);
- section 68 (facilities to be afforded to street authority);
- section 69 (works likely to affect other apparatus in the street);
- section 76 (liability for cost of temporary traffic regulation);
- 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.

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) have effect as if references in section 57 of that Act to emergency works were references to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

(13) 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).

(14) Sections 54, 55, 57, 60, 68 and 69 were amended by sections 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).

(15) As also amended by section 49(1) of the Traffic Management Act 2004.

(16) As also amended by sections 49(2) and 51(9) of the Traffic Management Act 2004.

(17) As also amended by section 52(3) of the Traffic Management Act 2004.

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

PART 2

WORKS PROVISIONS

Principal powers

Power to construct and maintain works

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

(2) Subject to article 5 (power to deviate), the scheduled works may only be constructed in the lines or situations shown on the deposited plans and in accordance with the levels shown on the deposited sections.

(3) Subject to paragraph (6), TfL 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) works required for the strengthening, improvement, repair or reconstruction of any street;
- (b) works for the strengthening, alteration or demolition of any building;
- (c) works to erect and construct offices, head houses and other buildings, machinery, apparatus, works and conveniences;
- (d) railway electrification and signalling works;
- (e) station services and finishes;
- (f) means of access, including footpaths;
- (g) retaining walls, fencing, barriers, wing walls, shafts, drainage works and culverts;
- (h) works to remove or alter the position of any street furniture or apparatus, including mains, sewers, drains, pipes, cables and lights;
- (i) works to alter the course of, or otherwise interfere with, watercourses;
- (j) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised works;
- (k) facilities and works for the benefit or protection of land or premises affected by the authorised works;
- (l) the felling of trees; and
- (m) earthworks required for the carrying out of the authorised works.

(4) Subject to paragraph (6), TfL may carry out and maintain such other works (of whatever nature) as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the authorised works.

(5) TfL may remove any works constructed by it under this Order which have been constructed as temporary works or which it no longer requires.

(6) Paragraphs (3) and (4) only authorise the carrying out or maintenance of works—

- (a) within the Order limits; or
- (b) within the boundaries of any street abutting the Order limits or which has a junction with such a street.

(7) The powers conferred by this article may not be exercised within the boundaries of a street outside of the Order limits without the consent of the street authority but that consent must not be unreasonably withheld.

(8) In constructing and maintaining the scheduled works TfL may lay and install such number of railway lines, switches and crossings as may be necessary or expedient.

(9) Section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991⁽¹⁹⁾ and any byelaws made under that Act or the Water Resources Act 1991⁽²⁰⁾ do not apply to anything done under or in pursuance of this Order.

(10) The authorised works may be constructed and maintained under the powers conferred by this article regardless of anything contained in, or done under, Part 1 (registration) of, or Schedule 2 (non-registration or mistaken registration under the 1965 Act) to, the Commons Act 2006⁽²¹⁾.

(11) Where any maintenance of works is carried out under this article, such works may only be undertaken provided they have no greater effect than as described in the environmental statement.

Power to deviate

5.—(1) In constructing or maintaining any of the scheduled works, TfL may—

- (a) deviate laterally from the lines or situations shown on the deposited plans within the Order limits; and
- (b) deviate vertically from the levels shown on the deposited sections—
 - (i) to any extent upwards not exceeding 3 metres; and
 - (ii) subject to article 21 (power to acquire land) to any extent downwards as may be found to be necessary or convenient.

(2) Without limitation on the scope of paragraph (1), in constructing or maintaining the scheduled works TfL may within the limits mentioned in paragraph (1)—

- (a) deviate from their points of commencement and termination shown on the deposited plans and the deposited sections; and
- (b) in relation to any viaduct, viaduct structure or other structure above ground level, deviate from the design and location shown on the deposited plans and the deposited sections as it thinks fit, including by varying the number of any supporting columns or other structures, the distances between them and the height or clearance above the level of the ground.

Streets

Power to alter layout, etc., of streets

6.—(1) TfL may for the purposes of the authorised works alter the layout of any street within the Order limits and the layout of any street abutting the Order limits or which has a junction with such a street and without limitation on the scope of this power TfL may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footway, cycle track or verge within the street;
- (b) alter the level or increase the width of any such kerb, footway, cycle track or verge;
- (c) reduce the width of the carriageway of the street; and
- (d) carry out works for the provision, removal, suspension or alteration of parking places, loading bays, bus lanes, bus stop clearways and bus laybys.

⁽¹⁹⁾ 1991 c. 59.

⁽²⁰⁾ 1991 c. 57.

⁽²¹⁾ 2006 c. 26.

(2) The powers conferred by paragraph (1) in relation to any street abutting the Order limits or which has a junction with such a street must not be exercised without the consent of the street authority, but such consent must not be unreasonably withheld.

Power to keep apparatus in streets

7.—(1) TfL may, for the purposes of or in connection with the construction, maintenance and use of the authorised works, alter, move, remove, place and maintain in any street within the Order limits any work, equipment or apparatus including foundations, road islands, substations, electric lines and any electrical or other apparatus.

(2) In this article—

- (a) “apparatus” has the same meaning as in Part 3 of the 1991 Act;
- (b) “electric line” has the meaning given by section 64(1) (interpretation etc. of Part 1) of the Electricity Act 1989(22); and
- (c) the reference to any work, equipment, apparatus or other thing in a street includes a reference to any work, equipment, apparatus or other thing under, over, along or upon the street.

Power to execute street works

8. TfL may, for the purposes of and to the extent necessary for the construction of the authorised works, enter upon any of the streets within the Order limits and any street abutting the Order limits or which has a junction with such a street and break up or open the street, or any sewer, drain or tunnel under it, or tunnel or bore under the street.

Stopping up of streets

9.—(1) Subject to the provisions of this article TfL may, in connection with the construction of the authorised works, stop up each of the streets specified in columns (1) and (2) of Part 1 (streets to be stopped up for which a substitute is to be provided) of Schedule 2 (streets to be stopped up) to the extent specified, by reference to the letters and numbers shown on the traffic regulation plans, in column (3) of Part 1 of that Schedule.

(2) No street specified in columns (1) and (2) of Part 1 of Schedule 2 (being a street to be stopped up for which a substitute is to be provided) may be wholly or partly stopped up under this article unless either—

- (a) the new street to be substituted for it, and which is specified in relation to it by reference to one of the scheduled works mentioned in column (4) of that Part of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route is first provided and then maintained by TfL to the reasonable satisfaction of the street authority until completion 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 it are extinguished; and
- (b) TfL may appropriate and use for the purposes of its undertaking so much of the site of the street as is bounded on both sides by land owned by TfL.

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

(22) 1989 c. 29.

(5) This article is subject to paragraphs 37 and 38 of Part 3 (protection for electricity, gas, water and sewerage undertakers) of Schedule 8 (protective provisions).

Temporary stopping up and diversion of streets

10.—(1) TfL may, during and for the purposes of the execution of the authorised works 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), TfL may use any street stopped up under the powers conferred by this article within the Order limits as a temporary working site.

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

(4) Without limitation on the scope of paragraph (1), TfL may exercise the powers conferred by this article in relation to the streets specified in columns (1) and (2) of Part 2 (streets to be temporarily stopped up) of Schedule 2 (streets to be stopped up).

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

- (a) in relation to any street specified in Part 2 of Schedule 2 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 the 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.

Access to works

11. TfL may, for the purposes of the authorised works—

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

Agreements with street authorities

12.—(1) A street authority and TfL may enter into agreements with respect to—

- (a) the strengthening or improvement of any street under the powers conferred by this Order;
- (b) the maintenance of any street or of the structure of any bridge or tunnel carrying a street over or under the authorised railway;
- (c) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
- (d) the execution in the street of any of the works referred to in article 8 (power to execute street works).

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

- (a) provide 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.

Use of private roads for construction

13.—(1) TfL may use any private road within the Order limits or any private road abutting the Order limits or which has a junction with such a road for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of, or in connection with, the construction of the authorised works.

(2) TfL must compensate the person liable for the repair of a road to which paragraph (1) applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred by paragraph (1).

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

Supplemental powers

Discharge of water

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

(2) Any dispute arising from the exercise of the powers conferred by paragraph (1) to connect to or use a public sewer or drain is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(23).

(3) TfL 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) TfL must not make any opening into any public sewer or drain except—

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

(5) TfL 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) TfL 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 or oil or matter in suspension or any other potentially polluting material.

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(24).

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

(23) 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).

(24) S.I. 2016/1154.

(9) In this article, other than references to “public sewer or drain” or “watercourse”, expressions used both in this article and in the Water Resources Act 1991⁽²⁵⁾ have the same meaning as in that Act.

Water abstraction

15.—(1) The restriction imposed by section 24(1) (restrictions on abstraction) of the Water Resources Act 1991 does not apply in relation to the abstraction of water for the purposes of, or in connection with, the construction of the authorised works.

(2) Section 48A(1) (duty not to cause loss or damage to another by the abstraction of water) of the Water Resources Act 1991⁽²⁶⁾ does not apply in relation to the abstraction of water in connection with the exercise of the powers conferred by this Order.

(3) Where—

(a) TfL causes loss or damage to another person by the abstraction of water in connection with the exercise of the powers conferred by this Order; and

(b) the circumstances are such that causing the loss or damage would have constituted breach of the duty under section 48A(1) of the Water Resources Act 1991, but for paragraph (2),

TfL must compensate the other person for the loss or damage.

(4) Compensation under paragraph (3) is to be assessed on the same basis as damages for breach of the duty under section 48A(1) of the Water Resources Act 1991.

(5) Section 48A(5) (prohibition of claims in respect of loss or damage caused by abstraction of water which are not claims under that section) of the Water Resources Act 1991 has no application to claims under this article or under Part 3 of Schedule 8 (protection for the Environment Agency).

(6) In this article, “abstraction” has the same meaning as in the Water Resources Act 1991.

Protective works to buildings

16.—(1) Subject to the following provisions of this article, TfL may at its own expense and from time to time carry out such protective works to any building lying within the Order limits as TfL considers to be necessary or expedient.

(2) Protective works may be carried out—

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

(b) after the completion of the construction of that part of the authorised works, 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 TfL may (subject to paragraph (5)) enter and survey any building falling within paragraph (1) and any land within its curtilage and place on, leave on and remove from the land monitoring apparatus.

(4) For the purpose of carrying out protective works under this article to a building TfL may (subject to paragraphs (5) and (6)) with all necessary plant and equipment—

(a) enter the building and any land within its curtilage; and

(b) where the works cannot be carried out reasonably conveniently without entering land adjacent to the building, enter the adjacent land,

⁽²⁵⁾ 1991 c. 57.

⁽²⁶⁾ Section 48A was inserted by section 24(1) of the Water Act 2003 (c. 37).

and in either case TfL may take exclusive possession of the building and land if this is reasonably required for the purpose of carrying out the protective works.

(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;
- (c) a right under paragraph (4)(a) to enter and take possession of a building or land; or
- (d) a right under paragraph (4)(b) to enter and take possession of land,

TfL 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 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 of whether it is necessary or expedient to carry out the protective works or to enter and take possession of the building or land to be referred to arbitration under article 45 (arbitration).

(7) TfL 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 powers.

(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 constructed within 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 operation of that part of the works,

TfL must compensate the owners and occupiers of the building for any damage sustained by them.

(9) Without affecting article 44 (no double recovery), nothing in this article relieves TfL from any liability to pay compensation under section 10(2)(27) (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 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;
- (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; and
- (c) any works the purpose of which is to secure the safe operation of the authorised works or to prevent or minimise the risk of such operation being disrupted.

Planning permission

17. Any planning permission which is deemed by a direction given under section 90(2A)(28) (development with government authorisation) of the 1990 Act to be granted in relation to the

(27) Section 10 was 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.

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

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).

Power to survey and investigate land, etc.

- 18.**—(1) TfL may for the purposes of this Order—
- (a) survey or investigate any land within the Order limits;
 - (b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions as TfL thinks fit on the land to investigate the nature of the surface layer and subsoil and remove soil samples;
 - (c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on any such land;
 - (d) place on, leave on and remove from the land apparatus for use in connection with the exercise of any of the powers conferred by sub-paragraphs (a) to (c); and
 - (e) enter on the land for the purpose of exercising any of the powers conferred by sub-paragraphs (a) to (d).
- (2) No land may be entered, or equipment placed or left on or removed from the land under paragraph (1), unless at least 7 days’ notice has been served on every owner and occupier of the land.
- (3) Any person entering land under this article on behalf of TfL—
- (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) TfL must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.
- (6) If either a highway authority or a street authority fails to notify TfL of its decision within 14 days of receiving the application for consent under paragraph (4), that authority is deemed to have granted consent.

Power to lop trees overhanging the authorised works

- 19.**—(1) TfL 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), TfL 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.

Obstructing construction of the authorised works

20. Any person who, without reasonable excuse—

- (a) obstructs any person acting under the authority of TfL in constructing any of the authorised works; or
- (b) interferes with, moves or removes any apparatus belonging to any person acting under the authority of TfL,

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

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

21.—(1) TfL may acquire compulsorily, subject to paragraph (2), so much of the land shown on the deposited plans within the limits of deviation and of land to be acquired or used and described in the book of reference as may be required for the purposes of the authorised works and may use any land so acquired for those purposes or for any other purposes that are ancillary to its undertaking.

(2) In the case of land specified in Schedule 6 (land in respect of which acquisition is limited as regards subsoil) TfL’s power of compulsory acquisition under paragraph (1) is limited to the acquisition of land no more than 10 metres beneath the level of the surface of the land and all land above that depth.

(3) This article is subject to article 26 (new rights only to be acquired under or in certain lands).

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⁽²⁹⁾ applies; and
- (b) as if this Order were a compulsory purchase order made under that Act.

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

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

(4) In section 4A(1) (extension of time limit during challenge)—

- (a) for “section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order)” substitute “section 22 of the Transport and Works Act 1992 (validity of orders under section 1 or 3)”; and
- (b) for “the three year period mentioned in section 4” substitute “the five year period mentioned in article 33 (time limit for exercise of powers of acquisition) of the London Overground (Barking Riverside Extension) Order 2017”.

(29) 1981 c. 67.

(5) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 33 (time limit for exercise of powers of acquisition) of the London Overground (Barking Riverside Extension) Order 2017”.

(6) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat), after paragraph 29, insert—.

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 16 (protective works to buildings), 28 (temporary use of land for construction of works) or 29 (temporary use of land for maintenance of works) of the London Overground (Barking Riverside Extension) Order 2017.”

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

23.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(**30**) applies to TfL as if this Order were a compulsory purchase order.

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

(3) Omit section 5 (earliest date for execution of declaration) and 5A (time limit for general vesting declaration).

(4) In section 5B (extension of time limit during challenge)—

(a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 22 of the Transport and Works Act 1992 (validity of orders under section 1 or 3)”;

(b) for “the three year period mentioned in section 5A” substitute “the five year period mentioned in article 33 (time limit for exercise of powers of acquisition) of the London Overground (Barking Riverside Extension) Order 2017.

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

(6) References to the 1965 Act are construed as references to that Act as applied to the acquisition of land by article 22 (application of Part 1 of the 1965 Act).

Power to acquire new rights, etc.

24.—(1) TfL may acquire compulsorily such easements or other rights over any land referred to in 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) TfL may impose such restrictive covenants over any land referred to in article 21 which lies, or will on completion of the authorised works lie, beneath and/or adjacent to the authorised railway and the new elevated station as may be required for the purpose of protecting the authorised railway where it is running on the viaduct comprised in Work No. 2 and the new elevated station comprised in Work No. 2.

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

(4) Schedule 3 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 or article 26 (new rights only to be acquired under or in certain lands) of a right over land by the creation of a new right or the imposition of a restrictive covenant.

(5) Paragraph (6) applies to land to which this article applies and which is used for the relocation of any apparatus which it is expedient to divert or replace in consequence of the carrying out of the authorised works.

(6) In relation to the land to which this paragraph applies, the power to acquire or create easements or other rights under paragraph (1) is to be treated as also authorising the acquisition or creation by a statutory undertaker in any case where the Secretary of State gives consent in writing for that acquisition or creation.

(7) The reference in paragraph (6) to a “statutory undertaker” means a licence holder within the meaning of Part 1 of the Electricity Act 1989⁽³¹⁾, a gas transporter within the meaning of Part 1 of the Gas Act 1986⁽³²⁾, a water undertaker within the meaning of the Water Industry Act 1991⁽³³⁾, a sewerage undertaker within the meaning of Part 1 of that Act, any local authority which is a relevant local authority for the purposes of section 97 (performance of sewerage undertaker’s functions by local authorities, etc.) of that Act and a public communications provider within the meaning of section 151 (interpretation of Chapter 1) of the Communications Act 2003⁽³⁴⁾.

Power to acquire subsoil only

25.—(1) TfL may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in 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 TfL acquires any part of or rights in the subsoil of land under paragraph (1) TfL is not required to acquire an interest in any other part of the land.

(3) Paragraph (2) does not prevent Schedule 2A to the 1965 Act (as modified by article 22 (application of Part 1 of the 1965 Act) from applying where TfL acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

New rights only to be acquired under or in certain lands

26.—(1) This article applies to the land specified in Schedule 4 (acquisition of new rights only).

(2) In the case of the land specified in Schedule 4, TfL’s power of compulsory acquisition under article 21 is limited to the acquisition of such easements or other new rights in the land as it may require for the purposes of constructing, maintaining, protecting, renewing and using the authorised works.

(3) Where TfL acquires easements or other new rights over the land specified in Schedule 4, article 24(3) (power to acquire new rights, etc.) applies to the same extent as it applies to the acquisition of a new right under that article.

(31) 1989 c. 29.

(32) 1986 c. 44.

(33) 1991 c. 56.

(34) 2003 c. 21.

Rights under or over streets

27.—(1) TfL may enter upon and appropriate so much of the surface or subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised works and may use the surface, subsoil or airspace for those purposes or any other purpose ancillary to its undertaking.

(2) Subject to paragraph (4), the power under paragraph (1) may be exercised in relation to a street without TfL being required to acquire any part of the street or any easement or right in the street.

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

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

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

(5) Compensation is not payable under paragraph (3) to any person who is an undertaker to whom section 85 (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

28.—(1) Subject to paragraph (2), TfL may, in connection with the carrying out of the authorised works—

- (a) enter upon and take temporary possession of—
 - (i) the land specified in columns (1) and (2) of Schedule 5 (land of which temporary possession may be taken) and shown on the deposited plans as within the limits of land to be used only temporarily, for the purpose specified in relation to that land in column (3) of that Schedule relating to the authorised works (or any of those works) so specified in column (4) of that Schedule; and
 - (ii) any of the land within the limits of deviation and of land to be acquired or used in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act⁽³⁵⁾ and no declaration has been made under section 4 (execution of declaration) of the Compulsory Purchase (Vesting Declarations) Act 1981⁽³⁶⁾ ;
- (b) remove any buildings, apparatus and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on the land; and
- (d) construct any works in relation to that land as are mentioned in Schedule 1 (scheduled works) and any other works that are required.

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

⁽³⁵⁾ 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.

⁽³⁶⁾ 1981 c. 66.

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

- (a) in the case of land specified in columns (1) and (2) of Schedule 5, after the end of the period of 2 years beginning with the date of completion of the works specified in relation to that land in column (4) of that Schedule; or
- (b) in the case of land within the limits of deviation and of land to be acquired or used, after the end of the period of 2 years beginning with the date of completion of the works for which temporary possession of the land was taken unless TfL has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 in relation to that land.

(4) Subject to paragraph (7), before giving up possession of land of which temporary possession has been taken under this article, TfL must remove all temporary works above a level 1 metre below the surface of the ground and restore the land above that level to the reasonable satisfaction of the owners of the land; but TfL is not required to replace a building removed under this article or restore the land on which any permanent works have been constructed under paragraph (1)(d).

(5) TfL 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.

(7) Without affecting article 44 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2)(37) (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) Where TfL takes possession of land under this article, TfL is not required to acquire the land or any interest in it.

(9) Section 13(38) (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 acquisition of land under this Order by virtue of article 22(1) (application of Part 1 of the 1965 Act).

Temporary use of land for maintenance of works

29.—(1) Subject to paragraphs (2) and (3), at any time during the maintenance period relating to any of the scheduled works, TfL may—

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

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

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

(37) Section 10 was amended by section 4 of, and paragraph 13(2) of Schedule 2 to, the Planning (Compulsory Purchase) Act 1990 (c. 11) and S.I. 2009/1307.

(38) Section 13 was 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).

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

(4) TfL 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, TfL must remove all temporary works above a level 1 metre below the surface of the ground and restore the land above that level to the reasonable satisfaction of the owners of the land.

(6) TfL 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 44 (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 TfL takes possession of land under this article, TfL is not required to acquire the land or any interest in it.

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

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

Compensation

Disregard of certain interests and improvements

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

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

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

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

Set-off for enhancement in value of retained land

31.—(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 which belongs to that person in the same capacity which will accrue to that person by reason of the construction and use of the authorised works.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any new rights in land (including the subsoil) under article 24 (power to acquire new rights, etc.), the tribunal must set off against the value of the right so acquired—

- (a) any increase in the value of the land over which the new rights are required; and
- (b) any increase in value of any contiguous or adjacent land which belongs 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

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 TfL, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by TfL under section 11(1)(**39**) (powers of entry) of the 1965 Act,

whichever is the sooner.

(2) Subject to paragraph (6), all private rights of way over land owned by TfL which, being within the limits of deviation and of land to be acquired or used, is required for the purposes of this Order, are extinguished on the appropriation of the land for any of those purposes by TfL.

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

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

(5) This article does not apply in relation to any right of way to which section 271 or 272 of the 1990 Act(**40**) (extinguishment of rights of statutory undertakers, etc.), or paragraph 4(3) of Part 1 (protection for Network Rail) or paragraph 39(2) of Part 3 (protection for electricity, gas water and sewerage undertakers) of Schedule 8 (protective provisions) applies.

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

- (a) any notice given by TfL before—
 - (i) the completion of the acquisition of;
 - (ii) TfL's appropriation of;
 - (iii) TfL's entry onto; or
 - (iv) TfL'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

(39) 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.

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

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

(7) If any such agreement as is mentioned in sub-paragraph (6)(b) is expressed to have effect also for the benefit of those deriving title from or under the person in or to whom the right of way in question is vested or belongs, it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

Time limit for exercise of powers of acquisition

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

- (a) no notice to treat is to be served under Part 1 of the 1965 Act, as applied to the acquisition of land by article 22 (application of Part 1 of the 1965 Act); and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the Compulsory Purchase (Vesting Declarations) Act 1981⁽⁴¹⁾, as applied by article 23 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The powers conferred by article 28 (temporary use of land for construction of works) cease at the end of the period referred to in paragraph (1); but nothing in this paragraph prevents TfL from remaining in possession of land after the end of that period, if the land was entered and possession of it was taken before the end of that period.

PART 4

OPERATION OF AUTHORISED WORKS

Power to operate and use the authorised works

34. TfL may operate and use the authorised works as a system, or part of a system, of transport for the carriage of passengers and for any connected ancillary purposes.

PART 5

PROTECTIVE PROVISIONS

Statutory undertakers, etc.

35. The provisions of Schedule 7 (provisions relating to statutory undertakers, etc.) have effect.

Protection of interests

36. The provisions of Schedule 8 (protective provisions) have effect.

(41) 1981 c. 66.

PART 6

MISCELLANEOUS AND GENERAL

Temporary traffic regulation

37.—(1) Subject to the provisions of this article TfL may, for the purposes of and during construction of the authorised works—

- (a) suspend the use as a parking, waiting or loading bay on those roads specified in column (1) of Part 1 (parking, waiting and loading bays) of Schedule 9 (temporary traffic regulation) between the points specified in column (2) of that Part of that Schedule, for the purposes specified in column (3) of that Part of that Schedule;
- (b) make provision as to the direction or priority of vehicular traffic and pedestrians on those roads specified in column (1) of Part 2 (shuttle working with traffic control) of Schedule 9, along the sections and between the points specified in column (2) of that Part of that Schedule, for the purposes specified in column (3) of that Part of that Schedule;
- (c) install pedestrian crossings on the roads specified in column (1) of Part 3 (pedestrian crossings) of Schedule 9 along the sections and between the points specified in column (2) of that Part of that Schedule, for the purposes specified in column (3) of that Part of that Schedule; and
- (d) without limiting the scope of the specific powers conferred by paragraphs (1)(a), 1(b) and (1)(c) so far as may be necessary or expedient for the purposes of or in connection with construction of the authorised works—
 - (i) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
 - (ii) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;
 - (iii) suspend or authorise the use as a parking place of any road;
 - (iv) make provision as to the direction or priority of vehicular traffic on any road; and
 - (v) permit or prohibit vehicular access to any road,

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

(2) The powers conferred by paragraph (1)(d) may only be exercised after TfL has consulted the chief officer of police, the traffic authority and such other persons as it considers necessary and appropriate, after TfL has taken into consideration any representations made to it by any such persons and after TfL has obtained the consent of the traffic authority in whose area the road concerned is situated (which must not be unreasonably withheld).

(3) TfL must not exercise the powers conferred by this article in relation to any road unless it has—

- (a) given not less than 4 weeks' notice in writing of its intention to do so to the chief officer of police and to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may, within 7 days of its receipt of notice of TfL's intention, specify in writing.

(4) Any prohibition, suspension or other provision made by TfL under paragraph (1) has effect as if duly made by, as the case may be—

- (a) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or

(b) the local authority in whose area the road is situated, as an order under section 32 (power of local authorities to provide parking places) of the 1984 Act, and the instrument by which it is effected may specify savings and exemptions (in addition to those mentioned in Schedule 9) to which the prohibition, restriction or other provision is subject.

(5) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by TfL from time to time by subsequent exercise of the powers conferred by paragraph (1).

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

(7) The powers conferred on TfL by this article with respect to any road have effect subject to any agreement entered into by TfL with any person with an interest in (or who undertakes activities in relation to) premises served by the road.

Powers of disposal, agreements for operation, etc.

38.—(1) TfL may, with the consent of the Secretary of State, sell, lease, charge or otherwise dispose of, on such terms and conditions as it thinks fit, the whole or any part of the authorised works and any land held in connection with them.

(2) Without limitation on the scope of paragraph (1), TfL may enter into and carry into effect agreements with respect to any of the following matters, namely, the construction, maintenance, use and operation of the authorised works, or any part or parts of them, by any other person, and other matters incidental or subsidiary to, or consequential on those matters, and the defraying of, or the making of contributions towards, the cost of those matters by TfL or any other person.

(3) Any agreement under paragraph (2) may provide, amongst other things, for the exercise of the powers of TfL in respect of the authorised works or any part of them, and for the transfer to any person of the authorised works or any part of them together with the rights and obligations of TfL in relation to them.

(4) The exercise of the powers, benefits or rights transferred to any person in connection with any sale, lease, charge or disposal under paragraph (1), or any agreement under paragraph (2), is subject to the same restrictions, liabilities and obligations as would apply under this Order if those powers were exercised by TfL.

Application of landlord and tenant law

39.—(1) This article applies to any agreement for leasing to any person the whole or any part of the authorised works or the right to operate those works, and any agreement entered into by TfL with any person for the construction, maintenance, use or operation of the authorised works, or any part of them, so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

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

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

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

- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Defence to proceedings in respect of statutory nuisance

40.—(1) Where proceedings are brought under section 82(1) (summary proceedings by persons aggrieved by statutory nuisances) of the Environmental Protection Act 1990⁽⁴²⁾ in relation to a nuisance falling within paragraph (g) of section 79(1)⁽⁴³⁾ 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 is to be imposed, under section 82(2) of that Act if the defendant shows—

- (a) that the nuisance relates to premises used by TfL 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 which are being carried out in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61⁽⁴⁴⁾ (prior consent for work on construction sites), of the Control of Pollution Act 1974⁽⁴⁵⁾; or
- (b) that the nuisance is a consequence of the operation of the authorised works and that it cannot reasonably be avoided.

(2) Section 61(9) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by TfL for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works.

(3) The provisions of this article do not affect the application to the authorised works of section 122 of the Railways Act 1993⁽⁴⁶⁾ (statutory authority as a defence to actions in nuisance, etc.) or any rule of common law having similar effect.

Disclosure of confidential information

41. A person who—

- (a) enters a factory, workshop or workplace under the provisions of article 16 (protective works to buildings) or article 18 (power to survey and investigate land, etc.); 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.

Certification of plans, etc.

42. TfL must, as soon as practicable after the making of this Order, submit copies of the book of reference, the deposited plans, the deposited sections, the environmental statement and the traffic regulation plans to the Secretary of State for certification that they are respectively, true copies of the

⁽⁴²⁾ 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).

⁽⁴³⁾ 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).

⁽⁴⁴⁾ 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).

⁽⁴⁵⁾ 1974 c. 40.

⁽⁴⁶⁾ 1993 c. 43. As amended by the Transport Act 2000 (c. 38) and the Railways Act 2005 (c. 14).

book of reference, the deposited plans, the deposited sections, the environmental statement and the traffic regulation plans, 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

43.—(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 (references to service by post) of the Interpretation Act 1978⁽⁴⁷⁾ as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

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

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

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

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

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

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

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

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

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

(47) 1978 c. 30.

No double recovery

44. 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, or under two or more different provisions of this Order.

Arbitration

45. Any difference under any provision of this Order, unless otherwise provided for in this Order or in an agreement between the parties, 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

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

15th August 2017

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

SCHEDULES

SCHEDULE 1

Article 2(1)

SCHEDULED WORKS

In the London Borough of Barking and Dagenham

Work No. 1 — Construction of new tracks and remodelling of existing tracks (2354 metres in length) to form part of the proposed track for the Barking Riverside Extension, located wholly at-grade within the existing railway corridor, commencing at a junction with Network Rail’s Essex Thameside (Tilbury Loop) Line 375 metres south-east of Barking Station Parade bridge, passing south-eastwards along the existing railway corridor below Ripple Road bridge, below the footbridge linking Harrow Road with Kennedy Road, over the Mayes Brook culvert, and below Alfred’s Way bridge, then turning east to pass along the north side of Network Rail’s Ripple Lane Marshalling Yard, and terminating at a point coinciding with the commencement of Work No. 2, 14 metres west of the bridge at Renwick Road.

Work No. 2 — A new railway (1701 metres in length) forming part of the proposed track for the Barking Riverside Extension, located partly at-grade and partly on viaduct, commencing at a point coinciding with the termination of Work No. 1, 14 metres west of the bridge at Renwick Road, passing eastwards, below the bridge at Renwick Road, then rising in elevation and turning gradually southwards to run on a bridge and viaduct structures over Work No. 4, over the extension of Box Lane, over Network Rail’s up goods, down goods and up Essex Thameside (Tilbury Loop) Line, over the High Speed One transfer sidings, over the Ship and Shovel Sewer, and over Choats Road, turning south-westwards and passing below a series of three pylon supported sets of high voltage electrical power lines, then turning southwards to run parallel to the east side of Renwick Road to a new elevated station and terminating at a point 49 metres south-east of the intersection of Renwick Road and River Road, including the construction of a new electrical sub-station in the area to the north-east of the bridge at Renwick Road.

Work No. 3 — The relocation and remodelling of a series of track connections and sidings (1343 metres in length) for Network Rail’s Ripple Lane freight marshalling yard, located wholly at-grade within the existing railway corridor commencing at a junction with the existing Network Rail’s up Essex Thameside (Tilbury Loop) Line 85 metres north-west of Alfred’s Way bridge, passing south-eastwards below Alfred’s Way bridge, turning eastwards to pass through Network Rail’s Ripple Lane Marshalling Yard, then passing below the bridge at Renwick Road and terminating at a connection with Network Rail’s up goods line 35 metres east of the bridge at Renwick Road.

Work No. 4 — The relocation of Network Rail’s down through siding (332 metres in length) located wholly at-grade within the existing railway corridor, commencing at a point on the existing down through siding 98 metres east of the bridge at Renwick Road passing eastwards and then north-eastwards below Work No. 2 and terminating at an intersection with the existing down through siding 425 metres east of the bridge at Renwick Road.

Work No. 5 — The relocation of part of the car terminal siding (120 metres in length) located wholly at-grade within the existing railway corridor, commencing at a point on Work No. 4, 142 metres east of the bridge at Renwick Road passing south-eastwards and terminating at an intersection with the existing car terminal siding 258 metres east of the bridge at Renwick Road.

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Work No. 6 — A footpath (251 metres in length), being a diversion of part of existing Footpath 47, commencing at point FP1 on Footpath 47, 96 metres north-east of the intersection of Renwick Road and River Road, passing south to point FP2, then passing west to point FP3 and then passing north and terminating at point FP4 at the intersection of Footpath 47 with Renwick Road, 78 metres north-north-east of the intersection of Renwick Road and River Road.

SCHEDULE 2

Articles 9 and 10

STREETS TO BE STOPPED UP

PART 1

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

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street affected</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New street to be substituted</i>
London Borough of Barking and Dagenham	Footpath 47	Footpath between FP4 and FP1	Footpath provided by Work No. 6 between points FP1 via FP2 and FP3 and terminating at FP4 as shown on the traffic regulation plans

PART 2

STREETS TO BE TEMPORARILY STOPPED UP

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be temporarily stopped up</i>
London Borough of Barking and Dagenham	Box Lane
	Choats Road between points LC1–LC2 to LC3–LC4 shown on the traffic regulation plans
	Footpath 47 between points FP1 to FP5 shown on the traffic regulation plans
	Renwick Road running into River Road between points LC5–LC6 to LC7–LC8 shown on the traffic regulation plans

SCHEDULE 3

Article 24

MODIFICATION OF COMPENSATION AND COMPULSORY
PURCHASING 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 and in the case of the imposition of a restrictive covenant, as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(48) 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 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 4—

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

3.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the following modification.

(2) In section 5A(5A) (relevant valuation date) of the 1961 Act, after “If” substitute—

- “(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act;
- (b) the acquiring authority is subsequently required by a determination under paragraph 13 of Schedule 2A to the 1965 Act (as substituted by paragraph 10 of Schedule 3 to the London Overground (Barking Riverside Extension) Order 2017) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right.”

Application of the 1965 Act

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

- (a) the right acquired or to be acquired or the restrictive covenant imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable or the restrictive covenant is or is to be enforceable.

(48) 1973 c. 26.

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(2) Without limitation on the scope of sub-paragraph (1), Part 1 (compulsory purchase under Acquisition of Land Act of 1946) 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.

5. For section 7 (measure of compensation in case of severance) of the 1965 Act substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the restrictive covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

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(49) (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 or restrictive covenant, it has power, exercisable in the equivalent circumstances and subject to the equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12(50) (penalty for unauthorised entry) and 13(51) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

8. Section 20(52) (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 or to enforce the restrictive covenant imposed, subject to compliance with that section as respects compensation.

10. For Schedule 2A of the 1965 Act substitute—

(49) 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.

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

(51) 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).

(52) 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 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1. This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and has not executed a general vesting declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981⁽⁵³⁾ as applied by article 23 (application of the Compulsory Purchase (Vesting Declarations) Act 1981) in respect of the land to which the notice to treat relates.

2. In this Schedule, “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the acquiring authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

6. The acquiring authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the acquiring authority decides to refer the counter-notice to the Upper Tribunal it must do so within the decision period.

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

9. If the acquiring authority serves notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

Determination by Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or

(53) 1981 c. 66, as amended by Part 7 of the Housing and Planning Act 2016 (c. 22).

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

(b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant,
- (b) the use to be made of the right or covenant proposed to be acquired or imposed, and
- (c) if the right or 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 of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the acquiring authority ought to be required to take.

13. If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in that land.

14.—(1) If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the acquiring authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph it must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

15. Any dispute as to the compensation is to be determined by the Upper Tribunal.”.

SCHEDULE 4

Article 26

ACQUISITION OF NEW RIGHTS ONLY

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown in the deposited plans</i>
London Borough of Barking and Dagenham	15

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SCHEDULE 5

Article 28

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on the deposited plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Authorised works</i>
London Borough of Barking and Dagenham	1 & 8	Construction working space and ancillary works	Work No. 1
	22	Construction working space and ancillary works	Works Nos. 2, 4 & 5
	23	Worksite, construction working space and ancillary works	Works Nos. 2, 4 & 5
	24, 25, 27, 35 & 36	Construction working space and ancillary works	Work No. 2
	28 & 37	Ancillary works	Works Nos. 2 & 6
	30	Ancillary works and access to wildlife relocation site	Work No. 2
	31	Access to wildlife relocation site	Associated with construction of Work No. 2
	32	Wildlife relocation site	Associated with construction of Work No. 2
	33 & 39	Worksite, construction working space and ancillary works	Works Nos. 2 & 6
40	Worksite, construction working space	Works Nos. 2 & 6	

SCHEDULE 6

Article 21

LAND IN RESPECT OF WHICH ACQUISITION IS LIMITED AS REGARDS SUBSOIL

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on the deposited plans</i>
London Borough of Barking and Dagenham	2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 14 & 17

SCHEDULE 7

Article 35

PROVISIONS RELATING TO STATUTORY UNDERTAKERS, ETC.

1. Sections 271 to 274(54) (power to extinguish rights of statutory undertakers etc. and power of statutory undertakers etc. to remove or re-site apparatus) of the 1990 Act apply in relation to any land acquired or appropriated by TfL under this Order subject to the following provisions of this Schedule; 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(55), which provide for the payment of compensation) have effect accordingly.

2. In the provisions of the 1990 Act, as applied by 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 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 TfL 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. 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 TfL 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 sewage disposal plant.

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

6. In this Schedule—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(56); and

“public utility undertakers” has the same meaning as in the 1980 Act(57).

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

(55) 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.

(56) 2003 c. 21.

(57) 1980 c. 66 as 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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SCHEDULE 8

Article 36

PROTECTIVE PROVISIONS

PART 1

PROTECTION FOR NETWORK RAIL

1. The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between TfL and Network Rail and, in the case of paragraph 15, any other person on whom rights or obligations are conferred or imposed by that paragraph.

2. In this Part of this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“Control Period” means the period during which Network Rail is required to implement the financial framework determined by the ORR at an access charges review in relation to the maintenance, renewal and enhancement of Network Rail’s infrastructure;

“Control Period 6” means the Control Period planned to commence on 1 April 2019 and conclude on 31 March 2024, or such other dates as may be advised by the ORR from time to time;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“the funding period” means Control Period 6 or, if later, the period ending two years after the railway forming part of the scheduled works is first opened for public use;

“network licence” means the network licence, as amended from time to time, granted to Network Rail by the Secretary of State in exercise of powers under section 8 (licences) of the Railways Act 1993⁽⁵⁸⁾;

“Network Rail” includes any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 (meaning of “subsidiary” etc.) of the Companies Act 2006)⁽⁵⁹⁾ the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“Network Rail Infrastructure Limited” means Network Rail Infrastructure Limited, a company limited by shares and incorporated under the Companies Act 1985, whose registered number is 02904587 and registered office is 1 Eversholt Street, London, NW1 2DN; “Network Rail third party agreement” means any agreement between Network Rail and any other party (a “third party”) concerning railway property or any asset held by a third party which is used in conjunction with railway property;

“ORR” means the Office of Rail and Road;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

⁽⁵⁸⁾ 1993 c. 43.

⁽⁵⁹⁾ 2006 c. 46.

“railway property” means any railway belonging to Network Rail and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by or for the benefit of Network Rail for the purposes of such railway or works, apparatus or equipment; and

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

3.—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval must not be unreasonably withheld or delayed but may be subject to reasonable conditions and is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with TfL with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements arising from those procedures; and
- (b) use its reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised works under this Order.

4.—(1) TfL must not exercise the powers conferred by article 16 (protective works to buildings) or article 18 (power to survey and investigate land, etc.) or the powers conferred by section 11(3) (powers of entry) of the 1965 Act or the Compulsory Purchase (Vesting Declarations) Act 1981(60) as applied by this Order in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

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

(3) TfL must not exercise the powers conferred by section 271 or 272 of the 1990 Act, as applied by Schedule 7 (provisions relating to statutory undertakers, etc.), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) TfL must not under the powers conferred by this Order acquire or use, or acquire new rights over or seek to impose any restrictions on the use of, any railway property except with the consent of Network Rail.

5.—(1) TfL must, before commencing construction of any specified work, supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 45 (arbitration).

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated disapproval of those plans and the grounds of disapproval TfL may serve upon the engineer written notice requiring the engineer to intimate his approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from TfL.

(60) 1981 c. 66.

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(3) If, following service of notice under sub-paragraph (2), the engineer has not by the expiry of the further 28 day period intimated his approval or disapproval, he is deemed to have approved the plans as submitted.

(4) If by the end of the period of 28 days beginning with the date on which written notice was served on the engineer under sub-paragraph (2), Network Rail gives notice to TfL that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail, then if TfL desires such part of the specified work to be constructed, Network Rail must construct it with all reasonable despatch on behalf of and to the reasonable satisfaction of TfL in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of TfL.

(5) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of the safe and efficient operation of the railways of Network Rail or the services of operators using those railways (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes are to be constructed by Network Rail, or by TfL, if Network Rail so desires, and such protective works must be carried out at the expense of TfL in either case with all reasonable despatch and TfL must not commence the construction of the specified works until the engineer has notified TfL that the protective works have been completed to the engineer's reasonable satisfaction.

6.—(1) Any specified work and any protective works to be constructed under paragraph 5(5) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic on it or the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of, a specified work, TfL must, regardless of any approval, make good such damage and pay to Network Rail all reasonable expenses which Network Rail may incur and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes—

- (a) any liability on TfL with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents; or
- (b) any liability on Network Rail with respect to any damage, costs, expenses or loss attributable to the negligence of TfL or its servants, contractors or agents.

7. TfL must—

- (a) at all times afford 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.

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

9.—(1) If any permanent or temporary alterations or additions to railway property, or to any protective works under paragraph 5(5), are reasonably necessary by reason or in consequence of the construction of a specified work or during a period of 12 months after the opening for public use of any authorised work that includes a specified work, in consequence of that specified work for public use in order to ensure the safety of railway property or the safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to TfL reasonable notice of its intention to carry out such alterations and additions (which must be specified in the notice), TfL must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by TfL, Network Rail gives notice to TfL that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if TfL desires that part of the specified work to be constructed, Network Rail must assume construction of that part of the specified work and TfL must, regardless of any such approval of a specified work under paragraph 5(1), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason or in consequence of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a) provide such details of the formula by which those sums have been calculated as TfL may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by TfL to Network Rail under this paragraph.

(5) TfL will use reasonable endeavours not (whether by itself, its contractors or agents) to exercise any of the powers of this Order, or to do or omit to do any other thing, that would or might cause Network Rail to be in breach of any Network Rail third party agreement of which a copy has been provided to TfL in writing.

10. TfL must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of TfL as provided by paragraph 5(4) or in constructing any protective works under the provisions of paragraph 5(5) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by TfL and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may

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be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer require to be imposed by reason or in consequence of the construction or failure of a specified work or from substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or consequence of the construction or failure of a specified work.

11.—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail’s apparatus generated by the operation of the authorised works where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised works) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 5(1) for the relevant part of the authorised works giving rise to EMI (unless TfL has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), TfL must in the design and construction of the authorised works take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate TfL’s compliance with sub-paragraph (3)—

- (a) TfL must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to TfL all information in the possession of Network Rail reasonably requested by TfL in respect of Network Rail’s apparatus identified under paragraph (a); and
- (c) Network Rail must allow TfL reasonable facilities for the inspection of Network Rail’s apparatus identified under paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail’s apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(1) has effect subject to this sub-paragraph.

(6) If at any time prior to the commencement of operation of any part of the authorised works regardless of any measures adopted under sub-paragraph (3), the testing or commissioning of the authorised works causes EMI then TfL must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) immediately cease to use (or procure the cessation of use of) TfL’s apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in

the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

- (a) TfL must afford reasonable facilities to Network Rail for access to TfL's apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to TfL for access to Network Rail's apparatus in the investigation of such EMI; and
- (c) Network Rail must make available to TfL any additional material information in its possession reasonably requested by TfL in respect of Network Rail's apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus under sub-paragraph (5) or (6)—

- (a) Network Rail must allow TfL reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and
- (b) any modifications to Network Rail's apparatus approved under those sub-paragraphs must be carried out and completed by TfL in accordance with paragraph 6.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 10(a) any modifications to Network Rail's apparatus under this paragraph are deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 45 (arbitration) to the Institution of Civil Engineers is to be read as a reference to the Institution of Electrical Engineers.

12. TfL must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway belonging to Network Rail.

13. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to TfL informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, TfL must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

14. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the date when this Order was made by reason of the existence of a specified work (excluding any expenses incurred after the end of Control Period 6 in respect of a specified work vested in Network Rail), provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to TfL, are to be repaid by TfL to Network Rail.

15.—(1) TfL must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (but subject to article 44 (no double recovery)) which may be occasioned to or reasonably incurred by Network Rail—

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- (a) by reason or in consequence of the construction or maintenance of a specified work or the failure of such a work (excluding any costs, charges, damages and expenses incurred after the end of Control Period 6 in respect of a specified work vested in Network Rail); or
- (b) by reason or in consequence of any act or omission of TfL or of any person in its employment or of its contractors or others whilst engaged upon a specified work,

including (for the avoidance of doubt) any costs, charges, damages and expenses that are attributable to a breach by Network Rail of a Network Rail third party agreement when such breach is caused by or consequential on the exercise of the powers of this Order.

(2) In addition to the indemnity in sub-paragraph (1), TfL must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work (excluding any claims and demands arising after the end of Control Period 6 in respect of a specified work vested in Network Rail) or any such failure, act or omission; and the fact that any act or thing may have been done by Network Rail on behalf of TfL or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision will not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse TfL from any liability under the provisions of this sub-paragraph.

(3) Network Rail must give TfL reasonable notice of any such claim or demand and must make no settlement or compromise of such a claim or demand without the prior consent of TfL.

(4) The sums payable by TfL under sub-paragraph (1) or (2) may include a sum equivalent to the relevant costs.

(5) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any such sums which Network Rail receives under sub-paragraph (4) which relates to the relevant costs of that train operator.

(6) The obligation under sub-paragraph (4) to pay Network Rail the relevant costs will, in the event of default, be enforceable directly by any train operator concerned to the extent that the relevant costs would be payable to that train operator under sub-paragraph (4).

(7) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1) or (2); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 (licences) of the Railways Act 1993.

16. Network Rail must, on receipt of a request from TfL, from time to time provide TfL free of charge with written estimates of the costs, charges, expenses and other liabilities for which TfL is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 15) and with such information as may reasonably enable TfL to assess the reasonableness of any such estimate or claim made or to be made under this Part of this Schedule (including any claim relating to those relevant costs).

17. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by TfL under this Part of this Schedule or increasing the sums so payable.

18. TfL must, no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 42 (certification of plans, etc.) are certified by the

Secretary of State, provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

19. TfL and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into and carry into effect agreements for the transfer to TfL of—

- (a) any railway property shown on the deposited plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

20. Nothing in this Order, or in any enactment incorporated with or applied by this Order, is to prejudice or affect the operation of Part I of the Railways Act 1993.

21.—(1) If TfL proposes to exercise any of the powers of article 38 (powers of disposal, agreements for operation etc.), it shall not later than 28 days before any such application is made give written notice to Network Rail and any such notice must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is made.

(2) If TfL proposes to enter into any agreements with respect to any of the matters set out under article 38(2), it shall not later than 28 days before any such agreement is entered into give written notice to Network Rail and any such notice must describe or give (as appropriate)—

- (a) the nature of the agreement;
- (b) the extent of the geographical area to which the agreement relates; and
- (c) the name and address of any other person who it is intended would be a party to the agreement.

(3) TfL and the Secretary of State must have due regard to any representations made by Network Rail in response to any notice received under sub-paragraphs (1) and (2).

PART 2

PROTECTION FOR THE ENVIRONMENT AGENCY

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

(2) In this Part of this Schedule—

“the Agency” means the Environment Agency;

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

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

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“environmental duties” means the Agency’s duties in the Environment Act 1995⁽⁶¹⁾, the Natural Environment and Rural Communities Act 2006⁽⁶²⁾ and the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003⁽⁶³⁾;

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

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

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

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

“watercourse” includes all drains.

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

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 33.

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

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

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

24. Without limitation on the scope of paragraph 23, the requirements which the Agency may make under that paragraph include conditions requiring TfL 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.

25.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 24, must be constructed—

⁽⁶¹⁾ 1995 c. 25.

⁽⁶²⁾ 2006 c. 16

⁽⁶³⁾ S.I. 2003/3242.

(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 Agency,

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

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

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

(4) Subject to sub-paragraph (5) and paragraph 29, if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served upon TfL, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any expenditure incurred by it in so doing is recoverable from TfL.

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

26.—(1) Subject to sub-paragraph (5) TfL must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and of land to be acquired or used or on land held by TfL 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 TfL is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require TfL to repair and restore the work, or any part of such work, or (if TfL so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to paragraph 29, if, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on TfL, TfL has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from TfL.

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

(5) This paragraph does not apply to—

(a) drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not prevented by the powers conferred by 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.

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27. Subject to paragraph 29, 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 TfL to the reasonable satisfaction of the Agency and if TfL fails to do so, the Agency may make good the impairment or damage and recover from TfL the expense reasonably incurred by it in doing so.

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

(2) If by reason of—

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

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

(3) Subject to paragraph 29, if within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, TfL fails to take such steps as are notified under sub-paragraph (2), the Agency may take those steps and may recover from TfL the expense reasonably incurred by it in doing so.

(4) Subject to paragraph 29, in any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from TfL the reasonable cost of so doing provided that notice specifying those steps is served on TfL as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

29. Nothing in paragraphs 25(4), 26(3), 27, 28(3) and 28(4) authorises the Agency to execute works on or affecting a railway forming part of the authorised works without the prior consent in writing of TfL such consent not to be unreasonably withheld or delayed.

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

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

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

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

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

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

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

33. Any dispute arising between TfL and the Agency under this Part of this Schedule, if the parties agree, is to be determined by arbitration under article 45 (arbitration), but otherwise is to be determined by the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Transport acting jointly on a reference to them by TfL or the Agency, after notice in writing by one to the other.

PART 3

PROTECTION FOR ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

Interpretation

34.—(1) The following provisions of this Part of this Schedule have effect unless otherwise agreed in writing between TfL and the specified undertaker concerned.

(2) The provisions of Schedule 7 (provisions relating to statutory undertakers, etc.), in so far as they relate to the removal of apparatus, do not apply in relation to apparatus to which this Schedule applies.

35. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the specified 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⁽⁶⁴⁾) belonging to or maintained by that specified 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—
 - (i) mains, pipes or other apparatus belonging to or maintained by that specified undertaker for the purposes of water supply; and
 - (ii) mains, pipes or other apparatus that is the subject of an agreement to adopt made under section 51A (agreements to adopt water main or service pipe) of the Water Industry Act 1991⁽⁶⁵⁾; and
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the specified 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) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreement to adopt sewer, drain or sewage disposal works, at future date) of that Act,

⁽⁶⁴⁾ 1989 c. 29.

⁽⁶⁵⁾ 1991 c. 56.

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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, across, along or upon land;

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

“specified undertaker” means—

- (a) National Grid Electricity Transmission Plc, whose registered office is 1-3 Strand, London WC2N 5EH;
- (b) National Grid Gas Plc, whose registered office is 1-3 Strand, London WC2N 5EH;
- (c) Thames Water Utilities Limited, whose registered office is Clearwater Court, Vastern Road, Reading, Berkshire RG1 8DB; and
- (d) Barking Power Limited, whose registered office is Barking Power Station, Chequers Lane, Dagenham, Essex RM9 6PF,

or any person succeeding any such company as a licence holder within the meaning of Part 1 of the Electricity Act 1989, a gas transporter within the meaning of Part 1 of the Gas Act 1986⁽⁶⁶⁾, a water undertaker within the meaning of the Water Industry Act 1991, or as a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991, and “the specified undertaker” in relation to any apparatus means the specified undertaker to whom the apparatus belongs or by whom it is maintained.

On-street apparatus

36. This Part of this Schedule does not apply to anything done or proposed to be done in relation to or affecting apparatus in respect of which the relations between TfL and the specified undertaker are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus in stopped up streets

37. Where any street is stopped up under article 9 (stopping up of streets), any specified undertaker whose apparatus is in the street will have the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and TfL must grant to the specified undertaker legal easements reasonably satisfactory to the specified undertaker in respect of such apparatus and access to it, but nothing in this paragraph will affect any right of TfL or of the specified undertaker to require the removal of that apparatus under paragraph 40 or the power of TfL to carry out works under paragraph 42.

38. TfL must not give less than 28 days’ notice in writing of its intention to stop up any street under article 9 (stopping up of streets) to any specified undertaker whose apparatus is in that street

Acquisition of land

39.—(1) Regardless of any provision in this Order or anything shown on the deposited plans TfL must not acquire any apparatus other than by agreement with the specified undertaker.

⁽⁶⁶⁾ 1986 c. 44.

(2) TfL may, in the exercise of the powers conferred by this Order, acquire or appropriate any interest in any land in which any apparatus is placed and, following the removal of such apparatus in accordance with the provisions of this Part of this Schedule, any rights in that land relating to that apparatus are extinguished, but that apparatus must not be removed under this Part of this Schedule and any right of a specified undertaker to use, maintain or renew 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 specified undertaker in question.

Removal of apparatus

40.—(1) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, TfL requires the removal of any apparatus placed in that land, it must give to the specified undertaker in question written notice of that requirement, together with plans 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 a specified undertaker reasonably needs to remove any of its apparatus) TfL must, subject to sub-paragraph (3), afford to the specified undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of TfL and for the subsequent use, maintenance and renewal of that apparatus.

(2) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of TfL, or TfL is unable to afford such facilities and rights as are mentioned in sub-paragraph (1), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the specified undertaker in question must, on receipt of a written notice to that effect from TfL, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(3) The obligation imposed on the specified undertaker under sub-paragraph (2) does not extend to the exercise by the specified undertaker of any power to acquire any land or rights in land by compulsory purchase order.

(4) Any alternative apparatus to be constructed in land of TfL 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 specified undertaker in question and TfL or in default of agreement settled by arbitration in accordance with article 45 (arbitration).

(5) The specified undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 45 (arbitration), and after the grant to the specified undertaker of any such facilities and rights as are referred to in sub-paragraphs (1) or (2), proceed with all reasonable despatch to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by TfL to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if TfL gives notice in writing to the specified undertaker in question that it desires itself to execute any work to which this sub-paragraph applies, that work, instead of being executed by the specified undertaker, may be executed by TfL with the prior written consent of the specified undertaker (which must not be unreasonably withheld or delayed and is to be subject to any such conditions as are reasonable and proper to protect the apparatus) in accordance with plans and in a position agreed between the specified undertaker and the promoter or, in default of agreement, determined by arbitration, with all reasonable despatch under the superintendence, if given, and to the reasonable satisfaction of the specified undertaker.

(7) In carrying out any work under sub-paragraph (6) TfL must comply with all statutory obligations which would have been applicable had the works been carried out by the specified undertaker.

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

(9) Nothing in sub-paragraph (6) authorises TfL 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 600 millimetres of the apparatus.

Facilities and rights for alternative apparatus

41.—(1) Where, in accordance with the provisions of this Part of this Schedule, TfL affords to a specified undertaker facilities and rights for the construction, use, maintenance and renewal in land of TfL of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between TfL and the specified undertaker in question or in default of agreement settled by arbitration in accordance with article 45 (arbitration).

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

- (a) give effect to all reasonable requirements of TfL for ensuring the safety and efficient operation of the authorised works and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of TfL 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 across or along the authorised works for which the alternative apparatus is to be substituted and to any other reasonable requirements of the specified undertaker.

(3) If the facilities and rights to be afforded by TfL 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 more or less favourable on the whole to the specified 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 to or by TfL by or to that specified undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection and plan approval

42.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by TfL under paragraph 40(1), TfL must submit to the specified undertaker in question plans of those works.

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

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

(4) If a specified undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by TfL, reasonably requires the removal of any apparatus and gives written notice

to TfL of that requirement, paragraphs 34 to 41 apply as if the removal of the apparatus had been required by TfL under paragraph 40(1).

(5) Nothing in this paragraph precludes TfL 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, new plans instead of the plans previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plans.

(6) TfL is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the specified undertaker in question notice as soon as is reasonably practicable and plans 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.

(7) Nothing in sub-paragraph (6) entitles TfL to carry out works to any apparatus but, upon receipt of notice from TfL, the specified undertaker must proceed to carry out such works as may be required without unreasonable delay.

Expenses

43.—(1) Subject to the following provisions of this paragraph, TfL must repay to a specified undertaker the reasonable expenses incurred by that specified undertaker in, or in connection with—

- (a) the inspection, removal and relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus under any provision of this Part of this Schedule (including any costs reasonably incurred or compensation properly paid in connection with the acquisition of facilities and rights or exercise of statutory powers for such apparatus);
- (b) the cutting off of any apparatus from any other apparatus, or the making safe of any redundant apparatus in consequence of the exercise by TfL of any power under this Order; and
- (c) the survey of any land, apparatus or works; the inspection, superintendence and monitoring of works; or the installation or removal of any temporary works reasonably necessary in consequence of the exercise by TfL of any power under this Order; and any other work or thing rendered reasonably necessary in consequence of the exercise by TfL of any such power,

within a reasonable time of being notified by the specified undertaker that it has incurred such expenses.

(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) alternative 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, except where this has been solely due to using the nearest currently available type; 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 situated,

and the placing of apparatus of that type or capacity or those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by TfL or, in default of agreement, is not determined by arbitration in accordance with article 45 (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 paragraph would be payable to

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the specified undertaker in question by virtue of sub-paragraph (1), is to be reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as placing of apparatus of greater dimensions than those of the existing apparatus, except in a case where the apparatus as so extended serves a purpose (either additional to or instead of that served by the existing apparatus) which was not served by 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 a specified undertaker in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the specified undertaker any financial benefit by deferment of the time for renewal of the apparatus in the normal course, be reduced by the amount which represents that benefit as calculated in accordance with the Code of Practice entitled “Measures Necessary where Apparatus is Affected by Major Works (Diversionary Works)” and dated June 1992 and approved by the Secretary of State on 30th June 1992, as revised and re-issued from time to time.

(6) In any case where work is carried out by TfL under paragraphs 40(6) to (8) and, if such work had been carried out by the specified undertaker, the repayment made to the specified undertaker under sub-paragraph (1) would fall to be reduced under sub-paragraphs (3) to (5), the specified undertaker must pay to the TfL such sum as represents the amount of that reduction.

Indemnity

44.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, maintenance or failure of any of the authorised works, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a specified undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any specified undertaker, TfL must bear and pay the cost reasonably incurred by that specified undertaker in making good such damage or restoring the supply, and must—

- (a) make reasonable compensation to that specified undertaker for any other expenses, loss, damages, penalty or costs incurred by the specified undertaker; and
- (b) indemnify the specified undertaker against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from, or incurred by, the specified undertaker,

by reason or in consequence of any such damage or interruption; and the fact that any act or thing may have been done by the specified undertaker on behalf of TfL or in accordance with plans approved by the specified undertaker or in accordance with any requirement of the specified undertaker or under its supervision does not, subject to sub-paragraph (2), excuse TfL from any liability under the provisions of this paragraph.

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

(3) A specified undertaker must give TfL reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of TfL, 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.

Access

45. If in consequence of the exercise of the powers conferred by this Order the access to any apparatus is materially obstructed TfL must provide such alternative means of access to that apparatus as will enable the specified undertaker to maintain or use the apparatus no less effectively than was possible before the obstruction.

Cooperation

46. Where in consequence of the proposed construction of any of the authorised works, TfL or the specified undertaker requires the removal of apparatus under paragraph 40(1) or the specified undertaker makes requirements for the protection or alteration of apparatus under paragraph 42(2), TfL must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and the specified undertaker must use all reasonable endeavours to co-operate with TfL for that purpose.

Exercise of safeguarding and survey powers

47.—(1) TfL must, so far as is reasonably practicable, exercise the powers conferred by article 16 (protective works to buildings) so as not to obstruct or render less convenient the access to any apparatus.

(2) TfL must not, in the exercise of the powers conferred by section 11(3) (powers of entry) of the 1965 Act, as applied by this Order, or by article 18 (power to survey and investigate land, etc.), make any trial holes which interfere with any apparatus without the consent of the specified undertaker (which must not be unreasonably withheld).

Arbitration

48. Any difference arising between TfL and a specified undertaker under this Part of this Schedule (other than a difference as to its meaning or construction) must be determined by arbitration in the manner provided by article 45 (arbitration) and in determining any difference under this Part of this Schedule the arbitrator may, if the arbitrator thinks fit, require TfL to execute any temporary or other works so as to avoid, so far as may be reasonably possible, interference with the use of any apparatus.

PART 4

PROTECTION FOR OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

49.—(1) The following provisions of this Part of this Schedule have effect unless otherwise agreed in writing between TfL and the operator.

(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;

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“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 Communications Act 2003⁽⁶⁷⁾;

“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 (application of the electronic communications code) of the Communications Act 2003; 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 (application of the electronic communications code) of the Communications Act 2003; and

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

50.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the construction of the authorised works, 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,

TfL 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 TfL with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give TfL 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 TfL 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 TfL and the operator under this paragraph is to be referred to and settled by arbitration under article 45 (arbitration).

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

- (a) any apparatus in respect of which the relations between TfL and an operator are regulated by the provisions of Part 3 (street works in England and Wales) 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.

⁽⁶⁷⁾ 2003 c. 21. See section 106.

SCHEDULE 9

Article 37

TEMPORARY TRAFFIC REGULATION

PART 1

PARKING, WAITING AND LOADING BAYS

<i>(1)</i> <i>Road</i>	<i>(2)</i> <i>Extent</i>	<i>(3)</i> <i>Notes</i>
London Borough of Barking and Dagenham		
Renwick Road	Renwick Road between points PT1–PT2 and PT3–PT4 shown on the traffic regulation plans	To provide access for construction vehicles to construction site.

PART 2

SHUTTLE WORKING WITH TRAFFIC CONTROL

<i>(1)</i> <i>Road</i>	<i>(2)</i> <i>Extent</i>	<i>(3)</i> <i>Notes</i>
London Borough of Barking and Dagenham		
Renwick Road	Southern section of Renwick Road between points SC1–SC2 and SC3–SC4 shown on the traffic regulation plans	To assist traffic flow and maintain two-way operation of traffic.

PART 3

PEDESTRIAN CROSSINGS

<i>(1)</i> <i>Road</i>	<i>(2)</i> <i>Extent</i>	<i>(3)</i> <i>Notes</i>
London Borough of Barking and Dagenham		
Renwick Road	Southern section of Renwick Road between points SC1–SC2 and SC3–SC4 shown on the traffic regulation plans	To provide pedestrian crossing.

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EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Transport for London to construct, operate and maintain an extension to the London Overground Gospel Oak to Barking line from Barking station to a new station at Barking Riverside in the London Borough of Barking and Dagenham.

The Order authorises the compulsory acquisition and the temporary use of land for the purposes of the works and confers other powers in connection with the construction, operation and maintenance of the works.

A copy of the deposited plans, the deposited sections, the traffic regulation plans, the book of reference and the environmental statement mentioned in the Order and certified in accordance with article 42 (certification of plans, etc.) may be inspected free of charge during normal working hours at the offices of Transport for London at Windsor House, 42–50 Victoria Street, London SW1H 0TL.