

1999 No. 2336

TRANSPORT AND WORKS, ENGLAND
TRANSPORT

The Railtrack (Leeds Bridges) Order 1999

Made - - - - *30th July 1999*

Coming into force *20th August 1999*

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Whereas an application has been made to the Secretary of State for the Environment, Transport and the Regions (“the Secretary of State”), in accordance with the Transport and Works (Applications and Objections Procedure) Rules 1992^(a) made under section 6 of the Transport and Works Act 1992^(b) (“the 1992 Act”), for an Order under sections 1 and 5 of the 1992 Act;

And whereas the objections to that application have been withdrawn;

And whereas the Secretary of State, has determined to make an Order giving effect to the proposals comprised in the application with modifications which in his opinion do not make any substantial change in the proposals;

And whereas notice of the Secretary of State’s determination was published in the London Gazette on 29th July 1999;

Now, therefore, the Secretary of State, in exercise of the powers conferred on him by sections 1 and 5 of, and paragraphs 1 to 5, 7, 8, 10, 11, 16 and 17 of Schedule 1 to, the 1992 Act and of all other powers enabling him in that behalf, hereby makes the following Order:—

(a) S.I. 1992/2902.

(b) 1992 c. 42.

PART I
PRELIMINARY

Citation and commencement

1. This Order may be cited as the Railtrack (Leeds Bridges) Order 1999 and shall come into force on 20th August 1999.

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961**(a)**;

“the 1965 Act” means the Compulsory Purchase Act 1965**(b)**;

“the Applications Rules” means the Transport and Works (Applications and Objections Procedure) Rules 1992, and references in this Order to numbered rules are to the Applications Rules bearing those numbers;

“authorised works” means the scheduled works and any other works authorised by this Order;

“the book of reference” means the book of reference described in rule 7(5) certified by the Secretary of State as the book of reference for the purposes of this Order;

“carriageway”, “footpath”, “highway” and “highway authority” have the same meaning as in the Highways Act 1980**(c)**;

“the deposited plans” means the plans prepared in pursuance of rule 7(1) and (3) certified by the Secretary of State as the deposited plans for the purposes of this Order and references to land shown on those plans are references to land so shown in pursuance of rule 7(3);

“the deposited sections” means the sections described in rule 7(2) certified by the Secretary of State as the deposited sections for the purposes of this Order;

“enactment” includes any order, byelaw, rule, regulation, scheme or other instrument having effect by virtue of an enactment;

“the limits of deviation”, in relation to a work, means the limits of deviation related to that work which are shown on the deposited plans;

“the limits of land to be temporarily used” means the limits of land to be temporarily used which are shown on the deposited plans;

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace; and “maintenance” shall be construed accordingly;

“the Order limits” means any of the limits of deviation or the limits of land to be temporarily used;

“owner”, in relation to land, means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple of land (whether in possession or reversion) and includes a person holding, or entitled to the rents and profits of, the land under a lease or tenancy having an unexpired term exceeding 3 years;

“Railtrack” means Railtrack PLC;

“the scheduled works” means the works specified in Schedule 1 to this Order;

“street” includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part III of the Street Works Act;

“the Street Works Act” means the New Roads and Street Works Act 1991**(d)**; and

“the tribunal” means the Lands Tribunal.

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

(3) All directions, distances, lengths and points stated in any description of works, powers or lands shall be construed as if the words “or thereabouts” were inserted after each such direction, distance, length and point.

(a) 1961 c. 33.
(b) 1965 c. 56.
(c) 1980 c. 66.
(d) 1991 c. 22.

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

(5) References in this Order to points identified by letters shall be construed as references to the points so lettered on the deposited plans.

Incorporation of Railways Clauses Consolidation Act 1845

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

section 24 (obstructing construction of railway), subject to the modification in paragraph (3) below;

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

section 68 (accommodation works by company);

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

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

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

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

section 145 (recovery of penalties); and

section 154 (transient offenders).

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

“the company” means Railtrack;

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

“the special Act” means this Order.

(3) Section 24 of the said Act of 1845, as incorporated in this Order, shall have effect as if the maximum fine which may be imposed on summary conviction of an offence under that section were instead of a fine not exceeding level 2 on the standard scale, a fine not exceeding level 3 on the standard scale.

PART II

WORKS

Principal powers

Power to construct and maintain scheduled works

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

(2) Subject to article 6 below, the scheduled works shall be constructed in the lines or situations shown on the deposited plans and in accordance with the levels shown on the deposited sections.

Power to construct and maintain ancillary works

5.—(1) Railtrack may, within the limits of deviation for the scheduled works, do such of the following as may be necessary or expedient for the purposes of, in connection with or in consequence of, the construction of the scheduled works, namely—

(a) make, provide and maintain all such approaches, bridges, ramps, means of access, shafts and stagings as Railtrack thinks fit,

(b) make junctions and communications (including the provision of steps or ramps for the use of persons on foot) with any highway or access way intersected or interfered with by, or contiguous to, any of those works, and widen or alter any highway or access way

(a) 1845 c. 20.

(b) 1923 c. 20.

for the purpose of connecting it with any of those works or another highway, or of crossing under or over the highway or access way,

- (c) construct, provide and maintain all such embankments, aprons, abutments, retaining walls, wing walls, culverts and other works as may be necessary or convenient,
- (d) alter or remove any structure erected upon any highway or adjoining land,
- (e) alter the position of apparatus, including mains, sewers, drains and cables,
- (f) alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses, and
- (g) carry out and maintain such other works, of whatever description, as may be necessary or expedient.

(2) Any power authorised by paragraph (1)(b) above which affects a highway shall not be exercised without the written consent of the relevant highway authority, but such consent shall not be unreasonably withheld.

(3) Railtrack may within the Order limits—

- (a) carry out and maintain landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised works, and
- (b) carry out and maintain works for the benefit or protection of land affected by the authorised works.

Power to deviate

6. In constructing or maintaining any scheduled work, Railtrack may—

- (a) deviate laterally from the lines or situations shown on the deposited plans within the limits of deviation for that work so shown, and
- (b) deviate vertically from the levels shown on the deposited sections to any extent not exceeding—
 - (i) three metres upwards, or
 - (ii) one metre downwards.

Streets

Power to execute street works

7.—(1) Railtrack may, for the purposes of the authorised works, enter upon so much of the street specified in Schedule 2 to this Order as is within the Order limits and may—

- (a) place apparatus in the street,
- (b) maintain apparatus in the street or change its position, and
- (c) execute any works required for or incidental to the authorised works or any works referred to in sub-paragraphs (a) and (b) above (including, in particular, breaking up or opening the street, or any sewer, drain or tunnel under it, or tunnelling or boring under the street).

(2) In this article “apparatus” has the same meaning as in Part III of the Street Works Act.

Permanent stopping up of street

8.—(1) Subject to the provisions of this article, Railtrack may, in connection with the construction of the authorised works, permanently stop up the street specified in columns (1) and (2) of Schedule 3 to this Order to the extent specified in column (3) of that Schedule.

(2) The new street to be substituted for the street to be stopped up under this article, and which is specified in column (4) of that Schedule, shall be completed to the reasonable satisfaction of the street authority and open for public use within three months after all bridge girders have been replaced in connection with Work No. 3.

(3) Any person who suffers loss by the extinguishment of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part I of the 1961 Act.

(4) This article is subject to paragraph 2 of Schedule 6 to this Order.

Temporary stopping up of streets

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

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

(2) Without prejudice to the generality of paragraph (1) above, Railtrack may use any street stopped up under the powers of this article as a temporary working site.

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

(4) Railtrack shall not exercise the powers of this article without the consent of the street authority, but such consent shall not be unreasonably withheld.

(5) The provisions of the Street Works Act mentioned in paragraph (6) below and any regulations made, or code of practice issued or approved under, those provisions shall apply (with the necessary modifications) in relation to the stopping up, alteration or diversion of a street by Railtrack under the powers conferred by this article where no street works are executed in that street as they would apply if the stopping up, alteration or diversion were occasioned by street works executed in that street by Railtrack.

(6) The provisions of the Street Works Act referred to in paragraph (5) above are—

- section 54 (advance notice of certain works);
- section 55 (notice of starting date of works);
- section 59 (general duty of street authority to co-ordinate works);
- section 60 (general duty of undertakers to co-operate);
- 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.

(7) Any person who suffers loss by the suspension of a private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part I of the 1961 Act.

(8) The exercise of powers under this article is subject to paragraph 1(6) of Part IV of Schedule 7 to this Order.

Agreements with street authorities

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

- (a) the maintenance of the structure of any bridge carrying a street over a railway,
- (b) any stopping up, alteration or diversion of a street under the powers conferred by this Order, or
- (c) the execution in the street of any of the works referred to in article 7(1) above.

(2) Such an agreement may, without prejudice to the generality of paragraph (1) above—

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question, and
- (b) contain such terms as to payment and otherwise as the parties consider appropriate.

Supplemental powers

Discharge of water

11.—(1) Railtrack may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised works and for that

purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, sewer or drain.

(2) Railtrack shall not discharge any water into any watercourse, public sewer or drain except with the consent of the authority to which it belongs; and such consent may be given subject to such terms and conditions as the authority may reasonably impose but shall not be unreasonably withheld.

(3) Railtrack shall not make any opening into any public sewer or drain except in accordance with plans approved by, and under the superintendence (if provided) of, the authority to which the sewer or drain belongs, but such approval shall not be unreasonably withheld.

(4) Railtrack shall 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.

(5) Railtrack shall 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.

(6) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991(a).

(7) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board, a local authority or a joint planning board,
- (b) “watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain, and
- (c) other expressions used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

PART III

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

12. Railtrack may acquire compulsorily so much of the land shown on the deposited plans within the limits of deviation for the scheduled works shown on those plans and described in the book of reference as may be required for or in connection with the authorised works, and may use any land so acquired for those purposes or for any other purposes connected with or ancillary to its railway undertaking.

Application of Part I of Compulsory Purchase Act 1965

13.—(1) Part I of the 1965 Act, insofar as not modified by or inconsistent with the provisions of this Order, shall apply to the acquisition of land under this Order—

- (a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981(b) applies, and
- (b) as if this Order were a compulsory purchase order under that Act.

(2) Part I of the 1965 Act, as so applied, shall have effect as if—

- (a) section 4 (which provides a time limit for compulsory purchase of land) and paragraph 3(3) of Schedule 3 (which makes provisions as to the giving of bonds) were omitted, and
- (b) in section 11(1) (which confers powers to enter on and to take possession of land subject to a notice to treat on giving not less than 14 days’ notice) for the reference to 14 days’ notice there were substituted—

(a) 1991 c. 57.

(b) 1981 c. 67.

- (i) in a case where the notice to treat relates only to the acquisition of subsoil or the acquisition of an easement or other right over the land, a reference to notice of one month, or
- (ii) in any other case, a reference to notice of 3 months.

Power to acquire new rights

14.—(1) Railtrack may compulsorily acquire such easements or other rights over any land referred to in article 12 above 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) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 4 to this Order), where Railtrack acquires a right over land under paragraph (1) above it shall not be required to acquire a greater interest in it.

(3) Schedule 4 to this Order shall have effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right.

(4) In relation to land to which this paragraph applies, article 12 above, so far as relating to the acquisition or creation of easements or other rights by virtue of paragraph (1) above, shall be treated as also authorising acquisition by a statutory utility in any case where the Secretary of State gives his consent in writing.

(5) Paragraph (4) above applies to land within the Order limits which is or will be required for use in relocating any apparatus which it is expedient to divert or replace in consequence of the carrying out of the works authorised by this Order; and in that paragraph “statutory utility” means a licence holder within the meaning of Part I of the Electricity Act 1989(a), a public gas transporter within the meaning of Part I of the Gas Act 1986(b), a water undertaker within the meaning of the Water Industry Act 1991(c), a sewerage undertaker within Part I of that Act and any local authority which is a relevant authority for the purposes of section 97 of that Act.

Power to acquire subsoil only

15.—(1) Railtrack may compulsorily acquire so much of the subsoil of the land referred to in article 12 above 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 Railtrack acquires any part of the subsoil of land under paragraph (1) above it shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) above shall not prevent article 19 below from applying where Railtrack acquires a cellar, vault, arch or other construction forming part of a house, building or factory.

Rights under or over streets

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

(2) The power under paragraph (1) above may be exercised in relation to a street without Railtrack being required to acquire any part of the street or any easement or right in the street.

(3) Railtrack shall not be required to pay any compensation for the exercise of the powers conferred by paragraph (1) above where the street is a highway; but where the street is not a highway any person suffering loss by the entry upon and appropriation of such subsoil shall be entitled to compensation to be determined, in case of dispute, under Part I of the 1961 Act.

(4) Paragraphs (2) and (3) above shall not apply in relation to—

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

(a) 1989 c. 29.

(b) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 c. 45.

(c) 1991 c. 56.

Temporary possession of land

Temporary use of land for construction of works

17.—(1) Railtrack may, in connection with the carrying out of the authorised works—

- (a) enter upon and take temporary possession of the land specified in columns (1) and (2) of Schedule 5 to this Order for the purpose specified in relation to that land in column (3) of that Schedule relating to the authorised work so specified in column (4) of that Schedule,
- (b) remove any buildings and vegetation from that land, and
- (c) construct temporary works (including the provision of means of access) and buildings on the land.

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

(3) Railtrack may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the work or works specified in relation to that land in column (4) of Schedule 5 to this Order.

(4) Before giving up possession of land of which temporary possession has been taken under this article, Railtrack shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but Railtrack shall not be required to replace a building removed under this article.

(5) Railtrack shall 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) above, or as to the amount of the compensation, shall be determined under Part I of the 1961 Act.

(7) Without prejudice to article 29 below, nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5) above.

(8) The powers of compulsory acquisition of land conferred by this Order shall not apply in relation to the land referred to in paragraph (1) above except that Railtrack shall not be precluded from—

- (a) acquiring new rights over any part of that land under article 14 above, or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 15 above.

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

(10) In this article “building” includes structure or any other erection.

Compensation

Disregard of certain interests and improvements

18.—(1) In assessing the compensation (if any) payable to any person on the acquisition from him of any land under this Order, the tribunal shall not take 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) above “relevant land” means the land acquired from the person concerned or any other land with which he is, or was at the time when the building was erected, the works executed or the improvement or alteration made, directly or indirectly concerned.

Supplementary

Acquisition of part only of certain properties

19.—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 13 above) in any case where—

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

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

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

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

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

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

the owner shall be required to sell the land subject to the notice to treat.

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

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

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

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

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

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

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

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

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

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

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

Extinction or suspension of private rights of way

20.—(1) All private rights of way over land subject to compulsory acquisition under this Order shall be extinguished—

(a) as from the acquisition of the land by Railtrack, whether compulsorily or by agreement, or

(b) on the entry on the land by Railtrack under section 11(1) of the 1965 Act,

whichever is sooner.

(2) All private rights of way over land of which Railtrack takes temporary possession under this Order shall be suspended and unenforceable for as long as Railtrack remains in lawful possession of the land.

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

(4) This article does not apply in relation to any right of way to which section 271 or 272 of the Town and Country Planning Act 1990(a) (extinguishment of rights of statutory undertakers etc.) or paragraph 2 of Schedule 6 to this Order applies.

Time limit for exercise of powers of acquisition

21.—(1) The powers conferred by this Order to acquire land or rights over land compulsorily, and the power conferred by article 17 above to enter upon and take temporary possession of land, shall cease at the end of the period of 5 years beginning on the day on which this Order comes into force.

(2) Paragraph (1) above shall not prevent Railtrack remaining in possession of land in accordance with article 17 above after the end of that period, if the land was entered and possession of it was taken before the end of that period.

PART IV

MISCELLANEOUS AND GENERAL

Noise

Control of construction sites: appeals

22. Sections 60 (control of noise on construction sites) and 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974(b) shall have effect, in relation to works

(a) 1990 c. 8.

(b) 1974 c. 40.

carried out in exercise of the powers conferred by this Order, as if in subsection (7) of each section (appeal against failure to give consent or the giving of qualified consent) for the words “a magistrates’ court” there were substituted the words “the Secretary of State”.

Defence to proceedings in respect of statutory nuisance

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

- (a) that the nuisance relates to premises used by Railtrack for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works, and
- (b) that the nuisance is attributable to the carrying out of works which are being carried out in accordance with a notice served under section 60, of the Control of Pollution Act 1974 or a consent given under section 61 or 65, of that Act.

(2) The following provisions of the Control of Pollution Act 1974, namely—

- (a) section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990), and
- (b) section 65(8) (corresponding provision in relation to consent for registered noise level to be exceeded),

shall not apply where the consent relates to the use of premises by Railtrack for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works.

Miscellaneous

Certain land to be treated as operational land

24. Planning permission which is deemed by a direction under section 90(2A) of the Town and Country Planning Act 1990**(b)** to be granted in relation to works authorised by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of that Act (cases in which land is to be treated as operational land for the purposes of that Act).

Statutory undertakers, etc.

25. The provisions of Schedule 6 to this Order shall have effect.

Protective provisions

26. The provisions of Schedule 7 to this Order shall have effect.

Certification of plans, etc.

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

Service of notices

28.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served by post.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978**(c)** as it applies for the purposes of this article, the proper address of any person in relation to the service on him of a notice or

(a) 1990 c. 43.

(b) 1990 c. 8.

(c) 1978 c. 30.

document under paragraph (1) above, if he 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, his last known address 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 his name or address cannot be ascertained after reasonable enquiry, the notice may be served by—

(a) addressing it to him 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) This article shall not be taken to exclude the employment of any method of service not expressly provided for by it.

No double recovery

29. Compensation shall not be payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law.

Arbitration

30. Any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) shall 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 notice in writing to the other) by the President of the Institution of Civil Engineers.

Repeals

31. The enactment specified in Schedule 8 to this Order is hereby repealed to the extent specified in the third column of that Schedule.

Signed by authority of the
Secretary of State for the Environment,
Transport and the Regions

A S D Whybrow
Head of Charging and Local Transport Division,
Department of the Environment,
Transport and the Regions

30th July 1999

SCHEDULES

SCHEDULE 1

Articles 2(1) and (4)

THE SCHEDULED WORKS

In the city of Leeds–

Work No. 1 – A reconstruction and widening of the bridge carrying the railways at Leeds North Junction over Globe Road, including a widening of the north western side of that bridge to an extent of 1 metre, and a widening of the south eastern side of that bridge to an extent of 5 metres.

Work No. 2 – A redecking over of the gap between the span of the southern bridge carrying the railway at Whitehall sidings over Whitehall Road, the reconstruction or strengthening of that span and the widening of the north eastern side of that bridge to an extent of 3 metres.

Work No. 3 – A redecking over of the gaps between the spans of the bridges carrying the railway at Whitehall sidings over the northbound and southbound carriageways of the A58 (Gelder Road/former Spence Lane), the reconstruction or strengthening of those spans and the widening of the south eastern and north western sides of those bridges to an extent of 1 metre.

SCHEDULE 2

Article 7

STREET SUBJECT TO STREET WORKS

(1) Area	(2) Street subject to street works
City of Leeds	Globe Road

SCHEDULE 3

Article 8

STREET TO BE PERMANENTLY STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

(1) Area	(2) Street to be stopped up	(3) Extent of stopping up	(4) New street to be substituted
City of Leeds	Footpath between Globe Road and Water Lane	Between points X and Y	Footpath to be provided between points X and Z.

SCHEDULE 4

Article 14

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

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land shall 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 as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without prejudice to the generality of paragraph 1 above, the Land Compensation Act 1973(a) shall have effect subject to the modifications set out in sub-paragraphs (2) and (3) below.

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

(a) for the words “land is acquired or taken” there shall be substituted the words “a right over land is purchased”, and

(b) for the words “acquired or taken from him” there shall be substituted the words “over which the right is exercisable”.

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

(a) for the word “part” in paragraphs (a) and (b) there shall be substituted the words “a right over land consisting”,

(b) for the word “severance” there shall be substituted the words “right over the whole of the house, building or manufactory or of the house and the park or garden”,

(c) for the words “part proposed” there shall be substituted the words “right proposed”, and

(d) for the words “part is” there shall be substituted the words “right is”.

Adaptation of the 1965 Act

3.—(1) The 1965 Act shall have 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 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

(b) the land over which the right is or is to be exercisable.

(2) Without prejudice to the generality of sub-paragraph (1) above, Part I of the 1965 Act shall apply in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

4. For section 7 of the 1965 Act (measure of compensation) there shall be substituted the following section—

“**7.** In assessing the compensation to be paid by the acquiring authority under this Order regard shall be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right 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 his, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

5. For section 8 of the 1965 Act (which relates to cases in which a vendor cannot be required to sell part only of a building or garden) there shall be substituted the following—

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

(a) a question of disputed compensation in respect of the purchase of the right would apart from this section fall to be determined by the Lands Tribunal (“the tribunal”); and

(a) 1973 c. 26.

(b) before the tribunal has determined that question the person satisfies the tribunal that he has in interest which he is able and willing to sell in the whole of the relevant land and—

- (i) where that land consists of a house, building or manufactory, that the right cannot be purchased without material detriment to that land, or
- (ii) where that land consists of such a park or garden, that the right cannot be purchased without seriously affecting the amenity or convenience of the house to which that land belongs,

the Railtrack (Leeds Bridges) Order 1999 (“the Order”) shall, in relation to that person, cease to authorise the purchase of the right and be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice shall be deemed to have been served in respect of that interest on such date as the tribunal directs.

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

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

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

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

shall be so modified 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 is vested absolutely in the acquiring authority.

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

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

9. Section 22 of the 1965 Act (protection of acquiring authority’s possession where by inadvertence an estate, right or interest has not been got in) shall be so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 5

Article 17

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) Area	(2) Number of land shown on deposited plans	(3) Purpose for which temporary possession may be taken	(4) Authorised work
City of Leeds	1 (part), 2 (part), 3 (part) and 6 (part)	Provision of working sites for construction purposes	Work No. 1
	8 (part), 9 (part), 11 (part), 12 (parts) and 13	Provision of working sites for construction purposes	Work No. 2
	14 (part), 15 (part), 17 (part), 18 (part), 20 (part) and 21 (part)	Provision of working sites for construction purposes	Work No. 3

SCHEDULE 6

Article 25

STATUTORY UNDERTAKERS, ETC.

Apparatus of statutory undertakers, etc. on land acquired

1.—(1) Sections 271 to 274 of the 1990 Act (power to extinguish rights of statutory undertakers, etc. and power of statutory undertakers, etc. to remove or re-site apparatus) shall apply in relation to any land acquired or appropriated by Railtrack under this Order subject to the following provisions of this paragraph; and all such other provisions of that Act as apply for the purposes of those provisions (including sections 275 to 278, which contain provisions consequential on the extinguishment of any rights under sections 271 and 272, and sections 279(2) to (4), 280 and 282, which provide for the payment of compensation) shall have effect accordingly.

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

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

(4) Sub-paragraph (3) above shall 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,

shall be entitled to recover from Railtrack compensation in respect of expenditure reasonably incurred by him, in consequence of the removal, for the purpose of making his drain or sewer communicate with any other public sewer or with a private sewage disposal plant.

(5) The provisions of the 1990 Act mentioned in sub-paragraph (1) above, as applied by that sub-paragraph, shall not have effect in relation to apparatus as respects which paragraph 2 below or Part III of the Street Works Act applies.

(6) In this paragraph—

“the 1990 Act” means the Town and Country Planning Act 1990(a);

“public telecommunications operator” means—

- (a) a person authorised, by a licence to which section 9 of the Telecommunications Act 1984(b) applies, to run a public telecommunications system, or
- (b) a person to whom the telecommunications code has been applied pursuant to section 10 of that Act; and

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

Apparatus of statutory undertakers, etc. in stopped up streets

2.—(1) On the stopping up under article 8 of this Order of the street specified in Schedule 3 to this Order any statutory utility whose apparatus is under, in, upon, over, along or across the street shall have the same powers and rights in respect of that apparatus, subject to the provisions of this paragraph, as if this Order had not been made.

(2) Where Railtrack exercise the powers of article 8 of this Order to stop up the street specified in Schedule 3 to this Order any statutory utility whose apparatus is under, in, upon, over, along or across the street may and, if reasonably requested so to do by Railtrack shall—

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

(3) The allowable costs of the relocation works shall be determined in accordance with section 85 of the Street Works Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section, and shall be borne by Railtrack and the statutory utility in such proportions as may be prescribed by any such regulations.

(4) In this paragraph—

“apparatus” has the same meaning as in Part III of the Street Works Act;

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

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

SCHEDULE 7

Article 26

PROTECTIVE PROVISIONS

PART I

PROTECTION FOR ELECTRICITY, GAS AND WATER UNDERTAKERS

1.—(1) For the protection of the undertakers referred to in this Part of this Schedule the following provisions shall, unless otherwise agreed in writing between Railtrack and the undertaker concerned, have effect.

-
- (a) 1990 c. 8.
 - (b) 1984 c. 12.
 - (c) 1980 c. 66.

(2) In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the undertaker in question to fulfil their 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**(a)**) belonging to or maintained by that undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a public gas transporter for the purposes of gas supply; and
- (c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply;

(not being, except in paragraph (2) below, apparatus in respect of which the relations between Railtrack and the undertakers are regulated by the provisions of Part III of the Street Works Act) and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land; and

“undertaker” means any of the following, namely, a licence holder within the meaning of Part I of the Electricity Act 1989, a public gas transporter within the meaning of Part I of the Gas Act 1986**(b)** and a water undertaker within the meaning of the Water Industry Act 1991**(c)**; and, in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

(3) The provisions of Schedule 6 to this Order shall not apply in relation to apparatus to which this Part of this Schedule applies.

2. Notwithstanding the temporary stopping up or diversion of any highway pursuant to article 9 of this Order, an undertaker shall be at liberty at all times to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain, or use any apparatus which at the time of the stopping up or diversion was in that highway.

3. Notwithstanding anything in this Order or shown on the deposited plans Railtrack shall not acquire any apparatus otherwise than by agreement.

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

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, Railtrack require the removal of any apparatus placed in that land, they shall give to the undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers of this Order an undertaker reasonably needs to remove any of its apparatus) Railtrack shall, subject to sub-paragraph (3) below, afford to the undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of Railtrack and thereafter for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of Railtrack, or Railtrack are unable to afford such facilities and rights as are mentioned in sub-paragraph (2) above, in the land in which the alternative apparatus or part of such apparatus is to be constructed, the undertaker in question shall, on receipt of a written notice to that effect from Railtrack, forthwith use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(a) 1989 c. 29.

(b) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 c. 45.

(c) 1991 c. 56.

(4) Any alternative apparatus to be constructed in land of Railtrack under this Part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between the undertaker in question and Railtrack or in default of agreement settled by arbitration pursuant to article 30.

(5) The undertaker in question shall, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 30 above, and after the grant to the undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3) above, proceed with all reasonable dispatch to construct and bring into operation the alternative apparatus and thereafter to remove any apparatus required by Railtrack to be removed under the provisions of this Part of this Schedule.

(6) Notwithstanding anything in sub-paragraph (5) above, if Railtrack give notice in writing to the undertaker in question that they desire themselves to execute any part of so much of the work necessary in connection with the construction of the alternative apparatus, or the removal of the apparatus required to be removed, as will take place in any land of Railtrack, that work, in lieu of being executed by the undertaker, shall be executed by Railtrack with all reasonable dispatch under the superintendence, if given, and to the reasonable satisfaction of the undertaker.

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

5.—(1) Where, in accordance with the provisions of this Part of this Schedule, Railtrack afford to an undertaker facilities and rights for the construction, and maintenance, in land of Railtrack of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between Railtrack and the undertaker in question or in default of agreement settled by arbitration in accordance with article 30 above.

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

- (a) give effect to all reasonable requirements of Railtrack for ensuring the safety and efficient operation of the railway and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of Railtrack 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 applicable to the apparatus, if any, constructed in or along the railway for which the alternative apparatus is to be substituted.

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

6.—(1) Not less than 28 days before commencing the execution of any works of the type referred to in paragraph 4(2) above that are near to, or will or may affect, any apparatus the removal of which has not been required by Railtrack under paragraph 4(2), Railtrack shall submit to the undertaker in question a plan, section and description of the works to be executed.

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

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

(4) If an undertaker in accordance with sub-paragraph (3) above and in consequence of the works proposed by Railtrack, reasonably requires the removal of any apparatus and gives written notice to Railtrack of that requirement, the foregoing provisions of this Part of this Schedule shall apply as if the removal of the apparatus had been required by Railtrack under paragraph 4(2) above.

(5) Nothing in this paragraph shall preclude Railtrack for submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description in lieu of the plan, section and description previously submitted, and thereupon the provisions of this paragraph shall apply to and in respect of the new plan, section and description.

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

7. Where, by reason of this Order, any part of any highway in which any apparatus is situated ceases to be part of a highway an undertaker may exercise the same rights of access to such apparatus as it enjoyed immediately before the coming into force of this Order, but nothing in this paragraph shall affect any right of Railtrack or of the undertaker to require removal of such apparatus under this Part of this Schedule or the power of Railtrack to execute works in accordance with paragraph 6 above.

8.—(1) Subject to the following provisions of this paragraph, Railtrack shall repay to an undertaker the reasonable expenses incurred by that undertaker in, or in connection with the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 4(2) above.

(2) There shall be deducted from any sum payable under sub-paragraph (1) above the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.

(3) If in pursuance of the provisions of this Part of this Schedule—

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by Railtrack or, in default of agreement, is not determined by 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 the undertaker in question by virtue of sub-paragraph (1) above, shall be reduced by the amount of that excess.

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

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

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

9.—(1) Subject to sub-paragraphs (2) and (3) below, if by reason or in consequence of the construction of any such works as are referred to in paragraph 4(2) above, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of an undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any undertaker, Railtrack shall—

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

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

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

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

10.—(1) Where, by reason of the stopping up of any highway pursuant to this Order, any apparatus belonging to an undertaker and laid or placed in such highway or elsewhere is rendered derelict or unnecessary, Railtrack shall, subject to sub-paragraph (2) below, pay to that undertaker the value of such apparatus (which shall then become the property of Railtrack) and the reasonable cost of and any incidental costs to the cutting off of such apparatus from any other apparatus, and of and incidental to the execution or doing of any works or things rendered necessary or expedient by reason of such apparatus being so rendered derelict or unnecessary.

(2) Railtrack shall not under the provisions of this paragraph be required to pay to an undertaker the value of any apparatus rendered derelict or unnecessary if, to the reasonable satisfaction of the undertaker, other apparatus has at the expense of Railtrack been provided and laid and made ready for use in substitution for the apparatus so rendered derelict or unnecessary.

11. Nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between Railtrack and an undertaker in respect of any apparatus laid or erected in land belonging to Railtrack on the coming into force of this Order.

PART II

PROTECTION OF TELECOMMUNICATIONS OPERATORS

1.—(1) For the protection of telecommunications operators the following provisions shall, unless otherwise agreed in writing between Railtrack and the telecommunications operators concerned, have effect.

(2) In this Part of this Schedule expressions defined in the Telecommunications Act 1984^(a) have the same meanings as in that Act.

2. The temporary stopping up or diversion of any highway under article 9 of this Order shall not affect any right of a telecommunications operator under paragraph 9 of the telecommunications code to inspect, maintain, adjust, repair or alter any apparatus which, at the time of the stopping up or diversion, is in that highway.

PART III

PROTECTION FOR SEWERAGE UNDERTAKERS

1.—(1) For the protection of sewerage undertakers the following provisions shall, unless otherwise agreed in writing between Railtrack and the sewerage undertaker concerned, have effect.

^(a) 1984 c. 12.

(2) In this Part of this Schedule—

“construction” includes placing or altering; and “constructed” shall be construed accordingly;

“sewer” means a public sewer within the meaning of the Water Industry Act 1991^(a) and includes a disposal main within the meaning of that Act and any manholes, ventilating shafts, pumps or accessories forming part of any such sewer;

“specified work” means so much of the works as will or may be situated over or within 15 metres measured in any direction of, or (wherever situated) impose any load directly upon, any sewer; and

“the undertaker” means the sewerage undertaker for the area of the works or whose sewers are affected.

(3) The provisions of Schedule 6 to this Order shall not apply in relation to apparatus to which this Part of this Schedule applies.

2.—(1) Before commencing the construction or renewal of any specified work, and in the case of any temporary work its removal, Railtrack shall submit to the undertaker plans for those works as described in sub-paragraph (2) below (“the plans”) and shall not commence that work until the undertaker has signified in writing its approval of those plans.

(2) The plans to be submitted to the undertaker shall be detailed plans, drawings, sections and specifications describing the position and manner in which, and the level at which, any specified work is proposed to be constructed and the position of all sewers of the undertaker within 15 metres of that work or upon which the specified work will impose a load and shall include detailed drawings of every alteration which Railtrack may propose to any such sewers.

(3) For the purpose of the preparation of the plans and subject to such reasonable requirements as it may specify, the undertaker shall permit Railtrack to have access to plans in its possession and to any of its sewers.

(4) Any approval of the undertaker required under this paragraph—

(a) may be given subject to reasonable conditions,

(b) shall not be unreasonably withheld,

(c) shall be deemed to have been given if it is neither given nor refused within 56 days of the submission of plans for approval.

(5) The undertaker may require such modifications to be made to the plans as may be reasonably necessary to secure the sewerage system of the undertaker against interference or risk of damage and to provide and secure proper and convenient means of access to any sewer.

3.—(1) The specified work shall be constructed, and (in the case of any temporary work) removed, in accordance with the plans approved, or deemed to have been approved, or settled by arbitration, as the same may be amended from time to time by agreement between Railtrack and the undertaker, and in the construction or removal of the specified work Railtrack shall comply with all reasonable requirements of the undertaker and shall provide new, altered or substituted sewers or works for the protection of any sewers of the undertaker, in such manner as the undertaker may reasonably require, by way of replacement provision for or for the proper protection of, and for preventing injury or impediment to, any such sewer by reason of any specified work.

(2) All works under sub-paragraph (1) above, for the provision of new, altered or substituted sewers or the protection of any sewers of the undertaker shall, where so required by the undertaker, be constructed by the undertaker or under the supervision (if given) of an officer of the undertaker duly appointed for the purpose, and all costs, charges and expenses reasonably incurred by the undertaker in the construction of such works, or in the preparation or examination of plans or designs of such works, or in such supervision, shall be paid to the undertaker by Railtrack.

(3) When works for the provision of any such new, altered or substituted sewer, or any such protective work forming part of any such new, altered or substituted sewer or any existing sewer

(a) 1991 c. 56.

of the undertaker, have been completed under this Part of this Schedule to the reasonable satisfaction of the undertaker, they shall be vested in and become maintainable by the undertaker.

4.—(1) Subject to the following provisions of this Part of this Schedule, Railtrack shall be liable to make good, or, if the undertaker so decides, to repay to the undertaker any expense reasonably incurred by the undertaker in making good, all injury or damage to any sewers, drains or works vested in the undertaker (except in so far as such sewer, drain or work is intended for alteration or removal for the purposes of the specified work) caused by or resulting from the construction of any specified work or any investigation undertaken in relation to any specified works and the provision of any new, altered or substituted sewer or any protective work under this Part of this Schedule and shall pay to the undertaker any additional expense to which it may be put in the maintenance, management or renewal of any new, altered or substituted sewer which may be necessary in consequence of the construction of any specified work.

(2) Railtrack shall indemnify the undertaker against all actions, claims, demands, costs, expenses, damages or loss which may be made on or against the undertaker which the undertaker may incur or have to pay or which it may sustain in consequence of the construction of a specified work or of the failure or want of repair of a specified work or any subsidence caused by the construction of any specified work or in consequence of any act or omission of Railtrack, their contractors, agents, workmen or servants, whilst engaged upon the specified work and any new, altered or substituted sewer or any protective work.

(3) The undertaker shall give to Railtrack reasonable notice of any such claim or demand as aforesaid and no settlement or compromise thereof shall be made without the agreement in writing of Railtrack.

(4) Nothing in sub-paragraph (1) or (2) above shall impose any liability on Railtrack in respect of any damage to the extent that it is attributable to the act, neglect or default of the undertaker, its officers, servants, or, if not Railtrack, its contractors or agents.

(5) If in pursuance of the provisions of this Part of this Schedule—

(a) a sewer of better type, of greater capacity or of greater dimensions is placed in substitution for an existing sewer of worse type, of smaller capacity or of smaller dimensions, except where this is due to using the nearest currently available type, or

(b) a sewer (whether an existing sewer or a sewer substituted for an existing sewer) is placed at a depth greater than the depth at which the existing sewer was,

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

(6) For the purposes of sub-paragraph (5) above an extension of a sewer to a length greater than the length of an existing sewer shall not be treated as a placing of a sewer of greater dimensions than those of the existing sewer.

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

5.—(1) An officer of the undertaker duly appointed for the purpose may, at any reasonable time and, if required by Railtrack, under their supervision and control, enter upon and inspect any specified work or any other works constructed under this Part of this Schedule.

(2) The approval by the undertaker of any plans, drawings, sections or specifications or the supervision by it of any work under this Part of this Schedule shall not (if it was done without negligence on the part of the undertaker, its officers, servants, or, if not Railtrack, its contractors or agents) exonerate Railtrack from any liability or affect any claim for damages by the undertaker.

6.—(1) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 9 of this Order, the undertaker shall be at liberty at all times to construct and do all such works and things in, upon or under any such highways as may be reasonably necessary to enable it to maintain, protect, or use any sewer which at the time of the stopping up or diversion was in that highway.

(2) Where, by reason of this Order, any part of any highway in which any sewer is situated ceases to be part of a highway, the undertaker shall have powers and rights in respect of the sewer any may exercise the same rights of access to such sewer as it enjoyed immediately before the coming into force of this Order, but nothing in this paragraph shall affect any right of Railtrack or of the undertaker to require alteration of such sewer or any right of the undertaker to require new, altered or substituted sewers or works for the protection of any sewer under this Part of this Schedule.

7. As soon as reasonably practicable after the completion of the construction of the specified works, Railtrack shall deliver to the undertaker a plan and section showing the position and level of those works as constructed and all new, altered or substituted works provided under this Part of this Schedule.

PART IV

PROTECTION FOR LEEDS CITY COUNCIL

1.—(1) The following provisions shall apply for the protection of Leeds City Council (“the city council”), unless otherwise agreed in writing between Railtrack and the city council.

(2) Notwithstanding anything shown on the deposited plans and the deposited sections or the powers of article 6 above, Railtrack shall so construct the authorised works as not to reduce the headway under or span of any of the bridges comprised in the scheduled works.

(3) The authorised works shall be constructed as to prevent, so far as reasonably practicable the dripping of water.

(4) If in consequence of the exercise of the powers of this Order it is reasonably necessary to alter the position of, or to lengthen, or to strengthen, or to provide works for the protection of, any sewer or drain (including any associated gully or manhole) which is vested in or repairable by the city council such alteration, lengthening, strengthening or protective works shall be carried out or provided by the city council and Railtrack shall repay the expenses reasonably incurred by the city council in carrying out or providing the same.

(5) Railtrack shall compensate to the city council for any damage to any such sewer or drain or interference with the free flow of the contents of that sewer or drain, which may be caused by or in consequence of any act or default of Railtrack their contractors, servants or agents in connection with the authorised works.

(6) Railtrack shall make good all damage or injury which shall happen or be caused to the street by reason or in consequence of the construction of the authorised works.

(7) During the construction of the authorised works Railtrack shall make such arrangements for lighting and watching the authorised works (including the provision and working of traffic signs or lights) as may in the opinion of the city council be reasonably necessary to prevent danger or accident to persons and vehicles using the street.

SCHEDULE 8

Article 31

REPEALS

(1) Chapter	(2) Short title	(3) Extent of repeal
1902 c.cli	Midland Railway Act 1902	Section 10(2), (6), (7), (8), (11), (12) and (13)

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for the reconstruction and widening of certain railway bridges in the City of Leeds in connection with the remodelling and resignalling of Railtrack's western rail approaches to Leeds City Station.

A copy of the deposited plans and the deposited sections prescribed by rule 7(1), 7(2) and 7(3) of the Transport and Works (Applications and Objections Procedure) Rules 1992 and certified in accordance with article 27 of the Order may be inspected at the offices of the Company Secretary & Solicitor to Railtrack PLC, Railtrack House (DP 11), Euston Square, London NW1 2EE.

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