
STATUTORY INSTRUMENTS

2002 No. 1064

TRANSPORT AND WORKS, ENGLAND
TRANSPORT, ENGLAND

The Heathrow Express Railway Extension Order 2002

Made - - - - *9th April 2002*
Coming into force - - *30th April 2002*

Whereas an application has been made to the Secretary of State in accordance with the Transport and Works (Applications and Objections Procedure) Rules 1992(1) made under section 6, 7 and 10 of the Transport and Works Act 1992(2) (“the 1992 Act”), for an Order under section 1 of the 1992 Act;

And whereas the Secretary of State caused an inquiry to be held for the purposes of the application pursuant to section 11 of the 1992 Act;

And whereas the Secretary of State having considered 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 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 2nd April 2002;

Now, therefore, the Secretary of State, in exercise of the powers conferred on him by sections 1 and 5 and of, paragraphs 1 to 5, 7 to 11, 13, 15 and 16 of Schedule 1 to, the 1992 Act and of all other powers enabling him in that behalf, hereby makes the following Order:—

PART I

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Heathrow Express Railway Extension Order 2002 and shall come into force on 30th April 2002.

(1) S.I. 1992/2902.
(2) 1992 c. 42.

Interpretation

2.—(1) In this Order—

“the 1965 Act” means the Compulsory Purchase Act 1965⁽³⁾;

“the Applications Rules” means the Transport and Works (Applications and Objections Procedure) Rules 1992;

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

“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;

“the deposited plans” means the plans described in rule 7(1)(a) and (3) of the Applications Rules prepared in connection with the application for this Order and 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 that rule;

“the deposited sections” means the sections certified by the Secretary of State as the deposited sections for the purposes of this Order;

“the limits of deviation” means the limits of deviation for the scheduled works shown on the deposited plans;

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

“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;

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

“the tribunal” means the Lands Tribunal;

“the undertaker” means Heathrow Airport Limited and includes any subsidiary (within the meaning of section 736 of the Companies Act 1985⁽⁴⁾) of that company.

(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, and references to the subsoil of any land include references to any cellar, basement, vault, arch or other construction forming part of any such land.

(3) All directions, distances and lengths stated in any description of works, powers or lands shall be construed as if the words “or thereabouts” were inserted after each such direction and length and distances between points on a railway shall be taken to be measured along the railway.

Incorporation of the Railways Clauses Acts

3.—(1) The following provisions of the Railways Clauses Consolidation Act 1845⁽⁵⁾ shall be incorporated in this Order—

section 24 (obstructing construction of railway);

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);

(3) 1965 c. 56.

(4) 1985 c. 6.

(5) 1845 c. 20.

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⁽⁶⁾;

sections 103 and 104 (refusal to quit carriage at destination);

section 105 (carriage of dangerous goods on railway);

section 145 (recovery of penalties); and

section 154 (transient offenders).

(2) The following provision of the Railways Clauses Act 1863⁽⁷⁾ shall be incorporated in this Order—

section 12 (signals, watchmen etc.).

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

“the company” means the undertaker;

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

“lease” includes an agreement for a lease;

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

“the railway” means any railway authorised to be constructed by this Order and, except where the context otherwise requires, any other authorised works;

“the special Act” means this Order;

“toll” includes any rate or charge or other payment payable under this Order or any other enactment for any passenger or goods conveyed on any railway authorised to be constructed by this Order.

PART II

WORKS PROVISIONS

Principal powers

Power to construct works

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

(2) Subject to article 5 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.

(3) The undertaker may, within the limits of deviation, carry out and maintain such of the following works as may be necessary or expedient for the purposes of, in connection with or in consequence of, the construction of the scheduled works, namely—

⁽⁶⁾ 1923 c. 20.

⁽⁷⁾ 1863 c. 92.

- (a) works to alter the position of apparatus, including mains, sewers, drains and cables;
 - (b) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
 - (c) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the scheduled works;
 - (d) works for the benefit or protection of premises affected by the scheduled works; and
 - (e) such other works of whatever nature, including emergency escape shafts and air ventilation shafts, as may be necessary or expedient.
- (4) The undertaker may on or in any part of the lands numbered on the deposited plans 45, 46 and 47 make and maintain, in connection with the scheduled works, a railway station together with all such works as may be necessary or expedient for the purposes of, in connection with, or in consequence of, the construction of the station.

Power to deviate

5. In constructing or maintaining the scheduled works, the undertaker may—
- (a) deviate laterally from the lines or situations shown on the deposited plans within the limits of deviation for that work shown on that plan, and
 - (b) deviate vertically from the levels shown on the deposited sections—
 - (i) to any extent not exceeding 6 metres upwards; or
 - (ii) to any extent downwards as may be necessary or convenient.

Supplemental powers

Discharge of water

6.—(1) The undertaker 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 shown on the deposited plans, make openings into, and connections with, the watercourse, sewer or drain.

(2) The undertaker 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) The undertaker 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) The undertaker shall not, in the exercise of the powers conferred by this article, damage or interfere with the beds or banks of any watercourse forming part of a main river.

(5) The undertaker 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(8).

(7) In this article—

(8) 1991 c. 57.

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency or a local authority;
- (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.

Safeguarding works to buildings

7.—(1) Subject to the following provisions of this article, the undertaker may at its own expense and from time to time carry out such safeguarding works to any building lying within 50 metres of any authorised works (other than works under this article) as the undertaker considers to be necessary or expedient.

(2) The powers conferred by this article shall not extend to any land which is situated east of the eastern limit of the limits of deviation or west of the western edge of the Western Perimeter Road at Heathrow Airport.

(3) Safeguarding 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.

(4) Subject to paragraph (2) above, for the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) above and any land belonging to it.

(5) For the purpose of carrying out safeguarding works under this article to a building the undertaker may (subject to paragraphs (2) above and (6) and (7) below)—

- (a) enter the building and any land belonging to it; and
- (b) where the works cannot be carried out reasonably conveniently without entering land adjacent to the building, enter the adjacent land (but not any building erected on it).

(6) Before exercising—

- (a) a right under paragraph (1) above to carry out safeguarding works to a building;
- (b) a right under paragraph (4) above to enter a building;
- (c) a right under paragraph (5)(a) above to enter a building or land; or
- (d) a right under paragraph (5)(b) above to enter land,

the undertaker shall, except in 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) above, specifying the safeguarding works proposed to be carried out.

(7) Where notice is served under paragraph (6)(a), (c) or (d) above, the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the safeguarding works or to enter the building or land to be referred to arbitration under article 34 below.

(8) The undertaker shall compensate the owners and occupiers of any building or land in relation to which the powers of this article have been exercised for any loss or damage arising to them by reason of the exercise of those powers.

(9) Where—

- (a) safeguarding 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 safeguarding works are inadequate to protect the building against damage caused by the construction or operation of that part of the works,

the undertaker shall compensate the owners and occupiers of the building for any damage sustained by them.

(10) Without prejudice to article 32 below, nothing in this article shall relieve the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act.

(11) Any compensation payable under paragraph (8) or (9) above shall be determined, in case of dispute, under Part I of the Land Compensation Act 1961(9).

(12) In this article—

- (a) any reference to a building within 50 metres of a work includes—
 - (i) in the case of a work under the surface of the ground, a reference to any building within that distance of the point on the surface below which the work is situated; and
 - (ii) where a work has not commenced, a reference to a building within that distance of the proposed site of the work; and
- (b) “safeguarding works”, in relation to a building, means—
 - (i) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the construction, maintenance or operation of the authorised works; and
 - (ii) any works the purpose of which is to remedy any damage that has been caused to the building by the construction, maintenance or operation of the authorised works.

Power to survey and investigate land

8.—(1) The undertaker may for the purposes of this Order—

- (a) survey or investigate any land shown on the deposited plans and described in the book of reference or which may be affected by the authorised works;
- (b) without prejudice to the generality of sub-paragraph (a) above, make trial holes in such positions as the undertaker thinks fit on the land to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes; and
- (d) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (c) above.

(2) No land may be entered, or equipment placed or left on or removed from the land under paragraph (1) above, unless at least 7 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) shall, if so required, before or after entering the land produce written evidence of his authority to do so; and
- (b) may take with him such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) The undertaker shall make compensation for any damage occasioned, by the exercise of the powers conferred by this article, to the owners and occupiers of the land, such compensation to be determined, in case of dispute, under Part I of the Land Compensation Act 1961.

PART III

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

9. Subject to article 13 and article 14 below, the undertaker may acquire compulsorily so much of the land shown on the deposited plans within the limits of deviation 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 connected with or ancillary to its railway undertaking.

Application of Part I of the Compulsory Purchase Act 1965

10.—(1) Part I of the 1965 Act, in so far 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(10) 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 provision as to the giving of bonds) were omitted; and
- (b) in section 11(1) (which confers power 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—
 - (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.

Powers to acquire new rights

11.—(1) The undertaker may compulsorily acquire such easements or other rights over any land referred to in paragraph (1) of article 9 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 2 to this Order), where the undertaker acquires a right over land under paragraph (1) above the undertaker shall not be required to acquire a greater interest in it.

(3) Schedule 2 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.

Powers to acquire subsoil only

12.—(1) The undertaker may compulsorily acquire so much of the subsoil of the land referred to in paragraph (1) of article 9 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) Subject to paragraph (3) below, where the undertaker acquires any part of the subsoil or land under paragraph (1) above the undertaker shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) above shall not prevent section 8 of the 1965 Act or article 18 below from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or factory.

Cases where powers of acquisition limited to subsoil

13.—(1) This article applies to the lands numbered on the deposited plans 1 to 20, 22 to 25, 27 to 39 and 41.

(2) In the case of land to which this article applies, the undertaker's powers of compulsory acquisition under article 9 above shall be limited to the acquisition of, or rights in, so much of the subsoil of the land as may be required for the purposes of the authorised works.

(3) Where the undertaker acquires any part of, or rights in, the subsoil of land to which this article applies, it shall not be required to acquire a greater interest in the land or an interest in any other part of it.

(4) Paragraph (3) above shall not prevent section 8 of the 1965 Act or article 18 below from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or factory.

(5) References in this article to the subsoil of land are references to the subsoil lying more than 9 metres beneath the level of the surface of the land; and for this purpose "the level of the surface of the land" means—

- (a) in the case of any land on which a building is erected, the level of the surface of the ground adjoining the building;
- (b) in the case of a river, watercourse or other water area, the level of the surface of the ground nearest to it which is at all times above water level; or
- (c) in any other case, ground surface level.

Temporary possession of land

Temporary use of land for construction of works

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

- (a) enter upon and take temporary possession of any land which it is authorised by this Order to acquire compulsorily;
- (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 the undertaker shall serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker 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 authorised works.

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

(5) The undertaker 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 Land Compensation Act 1961.

(7) Without prejudice to article 32 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 any land of which temporary possession is taken under paragraph (1) above except that the undertaker shall not be precluded from—

- (a) acquiring new rights over any part of that land under article 11 above, or
- (b) acquiring any part of the subsoil or rights in the subsoil of that land under article 12 above or in accordance with article 13 above.

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

Temporary use of land for maintenance of works

15.—(1) At any time during the maintenance period for either of the scheduled works, the undertaker may—

- (a) enter upon and take temporary possession of any land within the limits of deviation which is within 20 metres of that work, if such possession is reasonably required for the purpose of, or in connection with, maintaining the work or any ancillary works connected with it;
- (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) above shall not authorise the undertaker to take temporary possession of—

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

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

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

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

(6) The undertaker 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.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6) above, or as to the amount of compensation, shall be determined under Part I of the Land Compensation Act 1961.

(8) Without prejudice to article 32 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 (6) above.

(9) Where the undertaker 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—

- (a) “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; and
- (b) any reference to land within a specified distance of a work includes, in the case of a work under the surface of the ground, a reference to land within the specified distance of the point on the surface below which the work is situated.

Supplementary

Disregard of certain interests and improvements

16.—(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 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) 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.

Set-off for enhancement in value of retained land

17.—(1) In assessing the compensation payable to any person in respect of the acquisition from him under this Order of any land (including the subsoil or undersurface), the tribunal shall set off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity which will accrue to him by reason of the construction of the authorised works and the works authorised by the Heathrow Express Railway Act 1991(**11**).

(2) In assessing the compensation payable to any person in respect of the acquisition from him of any new rights over land (including the subsoil or undersurface) under article 11 above, the tribunal shall set-off against the value of the rights so acquired—

- (a) any increase in value of the land over which the new rights are required, and

- (b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity,

which will accrue to him by reason of the construction of the authorised works and the works authorised by the Heathrow Express Railway Act 1991.

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

Acquisition of part of certain properties

18.—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 10 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 the undertaker 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 the undertaker 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 the undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker 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 the undertaker is authorised to acquire compulsorily under this Order.

(9) In any case where by virtue of a determination by the tribunal under this article a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker 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 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, the undertaker 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

19.—(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 the undertaker, whether compulsorily or by agreement, or

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

(2) All private rights of way over land of which the undertaker takes temporary possession under this Order shall be suspended and unenforceable for as long as the undertaker 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 Land Compensation Act 1961.

(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⁽¹²⁾ (extinguishment of rights of statutory undertakers etc.) applies.

Time limit for exercise of powers of acquisition

20.—(1) The powers conferred by this Order to acquire land or rights over land compulsorily, and the power conferred by article 14 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 the undertaker remaining in possession of land in accordance with article 14 above after the end of that period, if the land was entered and possession of it was taken before the end of that period.

(12) 1990 c. 8.

PART IV

MISCELLANEOUS AND GENERAL

Power to operate and use railways

21. The undertaker may operate and use the scheduled works and other authorised works as a system, or part of a system, of transport for the carriage of passengers and goods.

London Transport Users' Committee

22.—(1) On the opening of the authorised works for passenger services it shall be the duty of the London Transport Users' Committee to consider and, where it appears to them to be desirable, make recommendations with respect to any matter affecting the services and facilities provided on the lines comprising those works or at the station—

- (a) which has been the subject of representations (other than representations appearing to the committee to be frivolous) made to the committee by or on behalf of users of those services or facilities, or
- (b) which has been referred to the committee by the Secretary of State or by the undertaker; or
- (c) which appears to the committee to be a matter to which consideration ought to be given;

and copies of the minutes, conclusions and recommendations of the committee shall be sent to the undertaker.

(2) Nothing in paragraph (1) above shall entitle the London Transport Users' Committee to consider the charges made for any service or facility, or to consider any question relating to the discontinuance or reduction of railway services.

(3) If the undertaker proposes the discontinuance of all railway passenger services on the lines comprising those works or at or from the station, it shall, not less than six months before carrying the proposal into effect, give to the Secretary of State notice of that proposal.

(4) Upon receipt of a notice served under paragraph (3) above, the Secretary of State shall consider, having consulted the London Transport Users' Committee and such other persons or bodies as he may think fit, what measures, if any he should in all circumstances take.

Byelaws relating to railway

23.—(1) In this article and in article 24 below “the railway” means the railway comprised in the scheduled works and “railway premises” means premises of the undertaker used for or in connection with the operation of the railway.

(2) The undertaker may make byelaws regulating the use and working of, and travel on, the railway, the maintenance of order on that railway and railway premises, including the station authorised by article 4(4) above, the approaches to that station and any escalators, lifts, stairs and other communications constructed by it, and the conduct of all persons, including its officers and servants, while on those premises.

(3) Without prejudice to the generality of paragraph (2) above byelaws under this article may contain provisions—

- (a) with respect to tickets issued for entry on railway premises or travel on the railway or escalators, lifts, stairs and other communications, the payment of fares and charges and the evasion of payment of fares or charges;
- (b) with respect to interference with, or obstruction of, the railway or escalators, lifts, stairs and other communications;

- (c) with respect to the use of tobacco or other substances in railway vehicles and elsewhere and the prevention of nuisances;
- (d) for regulating the passage of bicycles and other vehicles on footways and other premises controlled by the undertaker and intended for the use of persons on foot;
- (e) for the safe custody and redelivery or disposal of property found in railway premises or vehicles of the undertaker or elsewhere upon the railway, and for fixing the charges which may be made in respect thereof.

(4) Any byelaws made under this article may provide that any person contravening them shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale for each offence.

(5) Without prejudice to the taking of proceedings under paragraph (4) above, if the contravention of any byelaw having effect under this section is attended with danger or annoyance to the public, or hindrance to the undertaker in the lawful conduct of the railway, it shall be lawful for the undertaker summarily to take action to obviate or remove the danger, annoyance or hindrance.

(6) The provisions of subsections (5) to (12) of section 67 of the Transport Act 1962⁽¹³⁾ shall apply to any byelaws made by the undertaker under this article as if for references to the Board, or the board in question, there were substituted references to the undertaker.

Power for undertaker to contract for police services

24.—(1) The undertaker may from time to time make agreements with the chief officer of police and a police authority for the employment by the undertaker of any members of the police establishment of that police authority for police duty within railway premises or elsewhere upon the railway.

(2) Any such agreement may contain such terms and conditions and provide for such payment or consideration as the undertaker shall agree with the police authority.

(3) In this article—

- (a) “police authority” includes a police authority within the meaning of the Police Act 1996⁽¹⁴⁾, and the Strategic Rail Authority;
- (b) “railway premises” means any building occupied by the undertaker for the purposes of its railway undertaking.

Power to transfer, lease etc. undertaking

25.—(1) In this article, unless the context otherwise requires—

“functions” includes powers, duties and obligations;

“transferee” means a person to whom all or any of the property or functions of the undertaker have been transferred by virtue of a transfer agreement; and

“transfer agreement” means an agreement entered into under paragraph (2) or (3) below.

(2) The undertaker may enter into and carry into effect an agreement to sell, lease, charge or otherwise dispose of, on such terms and conditions as it thinks fit, the whole or any part of the undertaking consisting of the authorised works and any land held for the purpose of, or in connection with, those works.

(3) Without prejudice to the generality of paragraph (2) above, the undertaker may enter into and carry into effect an agreement with any other person with respect to the transfer to and vesting in that other person of all or any of its functions under this Order.

⁽¹³⁾ 1962 c. 46.

⁽¹⁴⁾ 1996 c. 16.

(4) A transfer agreement may be entered into so as to transfer and vest such property and functions in any other person for such period as may be specified in that agreement or for so long as the agreement remains in force and where such an agreement is entered into references in this Order (except in the definition of “the participants” in paragraph 1(2) of Schedule 4 thereto) to the undertaker shall, to the extent that the agreement so provides, have effect as references to the transferee.

(5) Without prejudice to the powers of the undertaker to terminate or vary a transfer agreement, a transfer agreement may specify circumstances in which that agreement shall cease to have effect before the expiry of any period specified in any such agreement.

(6) A transfer agreement may include such supplementary, incidental, transitional and consequential provisions as the undertaker may consider to be necessary or expedient.

(7) Upon expiry of any period specified in a transfer agreement in accordance with paragraph (4) above, or upon a transfer agreement being terminated or otherwise ceasing to have effect, the functions and property of the undertaker which were transferred by that agreement shall, by virtue of this paragraph but subject to the effect of any further transfer agreement entered into by the undertaker, be revested in the undertaker, but such revesting shall not make the undertaker subject to any of the liabilities of the transferee other than any continuing duties imposed by this Order.

(8) Notwithstanding anything in any transfer agreement, any duty arising under this Order to complete the construction of, or to maintain or operate, any works in respect of which the undertaker’s functions are transferred by a transfer agreement, together with such rights and property as are required for the discharge of that duty, shall revert to the undertaker in the event of the abandonment of those works or in the event that the works are not completed within 10 years of the commencement of construction of those works.

(9) Unless the transfer agreement otherwise provides, if a duty to complete the construction of, to maintain or to operate any works reverts to the undertaker under paragraph (8) above, the transfer agreement shall terminate and all the functions and property of the undertaker which were transferred by that agreement shall be revested in the undertaker in accordance with paragraph (7) above.

(10) Within 21 days of the completion of any transfer agreement the undertaker shall serve notice on the Secretary of State stating the name and address of the transferee and the date when the transfer is to take effect.

(11) Within 21 days of the revesting in the undertaker of any property or functions pursuant to paragraph (10) or (11) or the reversion to the undertaker of any duty, rights or property pursuant to paragraph (8) above, the undertaker shall serve notice on the Secretary of State, providing him with particulars of the revesting or reversion concerned.

(12) If the undertaker fails, without reasonable excuse, to comply with the obligation imposed by paragraph (10) or (11) above it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(13) A transfer agreement may confer on the transferee the power of the undertaker to enter into a transfer agreement under this article in respect of any functions or property transferred to the transferee, and accordingly, the provisions of this article shall in their application to the exercise of such power by such transferee have effect as if any reference to the undertaker in those provisions (except paragraphs (8) and (9) above and paragraph (14) below) were a reference to the transferee.

(14) The inclusion in any transfer agreement of the power to enter into a transfer agreement or anything done in pursuance of such a power shall not affect the reversion to the undertaker in the circumstances referred to in paragraphs (8) and (9) above of any functions or property of the undertaker.

Maintenance of approved works, etc.

26.—(1) Where pursuant to the Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994(15) approval has been obtained from the Health and Safety Executive with respect to any works, plant or equipment (including vehicles) forming part of the railways authorised by this Order, such works, plant and equipment shall not be used in a state or condition other than that in which they were at the time that the approval was given unless any change thereto does not materially impair the safe operation of the railways so authorised.

(2) If without reasonable cause the provisions of paragraph (1) above are contravened, the undertaker shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) No proceedings shall be instituted in England and Wales in respect of an offence under this article except by or with the consent of the Health and Safety Executive or the Director of Public Prosecutions.

Disclosure of confidential information

27. A person who—

- (a) enters a factory, workshop or workplace in pursuance of the provisions of article 7 or 8 above; and
- (b) discloses to any person any information obtained by him relating to any manufacturing process or trade secret;

shall be 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 performing his duty in connection with the purposes for which he was authorised to enter the land.

Statutory undertakers, etc.

28. The provisions of Schedule 3 to this Order shall have effect.

Fuel pipelines and facilities

29. The provisions of Schedule 4 to this Order shall have effect.

Certification of plans, etc.

30. The undertaker 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 of respectively, the book of reference, sections and 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

31.—(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(16) 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 document under paragraph (1) above is, 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

32. 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.

Repeal

33. Subsection (3) of section 43 of the Heathrow Express Railway Act 1991 is hereby repealed.

Arbitration

34. 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.

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

Ellis Harvey
Head of the Transport and Works Act Processing
Unit,
Department for Transport, Local Government
and the Regions

9th April 2002

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SCHEDULES

SCHEDULE 1

Articles 2(1) and 4

SCHEDULED WORKS

In the London Borough of Hillingdon—

Work No. 1A—A railway (2,280 metres in length in tunnel) commencing by a junction with Work No. 5 (in tunnel) authorised by the Heathrow Express Railway Act 1991 at a point, at chainage 45 metres from the commencement of that work, and terminating beneath a point 23 metres east of the Western Perimeter Road.

Work No. 1B—A railway (2,425 metres in length in tunnel) commencing by a junction with Work No. 4 (in tunnel) authorised by the Heathrow Express Railway Act 1991 at a point, at chainage 1,530 metres from the commencement of that work, and terminating beneath a point 55 metres east of the Western Perimeter Road.

SCHEDULE 2

Article 11

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 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 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 “right is”.

Adaptation of 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 Act 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 that land by reason of injurious affection of other lands of the owner held with that land by the exercise of the powers conferred by this or the special Act.”.

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

(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
- (b) before the tribunal has determined that question the person satisfies the tribunal that he has an 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 Heathrow Express Railway Extension Order 2002 (“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.

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(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 that 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 3

Article 28

PROVISIONS RELATING TO 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 the undertaker 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 the undertaker 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 the undertaker 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 Part III of the New Roads and Street Works Act 1991(17) or paragraph 2 below applies.

(6) In this paragraph—

“the 1990 Act” means the Town and Country Planning Act 1990;

“public telecommunications operator” means—

- (a) a person authorised, by a licence to which section 9 of the Telecommunications Act 1984(18) 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(19).

For the protection of London Underground Limited

2.—(1) The provisions of this paragraph shall have effect except in so far as may be otherwise agreed between the company and the undertaker and in this paragraph—

“the company” means London Underground Limited;

“construction” includes execution, placing and altering and “construct” and “constructed” shall be construed accordingly;

“designated property” means any railways of the company and any works connected therewith for the maintenance or operation of which the company are responsible and includes any lands, premises, arches, cellars or vaults held or used by the company for the purposes of such railways or works;

(17) 1991 c. 22.

(18) 1984 c. 12.

(19) 1980 c. 66.

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“the engineer” means an engineer to be appointed by the company;

“plans” includes sections, drawings, calculations, methods of construction and particulars and “approved plans” means plans approved or deemed to be approved or settled by arbitration in accordance with the provisions of this Order; and

“the specified works” means so much of the authorised works as may be situated within 15 metres of, or may in any way affect, designated property.

(2) Notwithstanding anything in this Order or shown on the deposited plans, the undertaker shall not purchase compulsorily any designated property but it may purchase such easements or other rights in, under or over designated property in accordance with the provisions of article 11 above as it may reasonably require for the purpose of the specified works.

(3) The undertaker shall, before commencing the specified works, furnish to the company proper and sufficient plans thereof for the approval of the engineer, whose approval shall not be unreasonably withheld, and shall not commence the specified works until plans thereof have been approved in writing by the engineer or settled by arbitration but, if within 56 days after such plans have been furnished to the company the engineer shall not have intimated his disapproval thereof and the grounds of his disapproval, he shall be deemed to have approved the same.

(4) If within 56 days after such plans have been furnished to the company, the company shall give notice to the undertaker that the company desire themselves to construct any part of the specified works which in the opinion of the engineer will or may affect the stability of designated property or the safe operation of the company’s railways, then, if the undertaker desires such part of the specified works to be constructed, the company shall construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with approved plans.

(5) Upon signifying his approval or disapproval of the plans the engineer may specify any protective works, whether temporary or permanent, which in his opinion should be carried out before the commencement of the specified works to ensure the safety or stability of designated property and such protective works as may be reasonably necessary for those purposes shall be constructed with all reasonable dispatch and the undertaker shall not commence the construction of the specified works until the engineer shall have notified the undertaker that the protective works have been completed.

(6) The undertaker shall give to the engineer not less than 28 days' notice of its intention to commence the construction of any of the specified works and also, except in an emergency (when it shall give such notice as may be reasonably practicable), of its intention to carry out any works for the repair or maintenance of the specified works in so far as such works of repair or maintenance affect or interfere with the designated property.

(7) The specified works shall, when commenced, be carried out—

(a) with all reasonable dispatch in accordance with approved plans;

(b) under the competent supervision (if given) and to the reasonable satisfaction of the engineer; and

(c) in such manner as to cause—

(i) as little damage to designated property as may be; and

(ii) as little interference as may be with the conduct of traffic on any railway of the company and the use by passengers of designated property;

and, if any damage to designated property or any such interference shall be caused by the carrying out of the specified works, the undertaker shall, notwithstanding any such approval as aforesaid, make good such damage and shall on demand pay to the company all reasonable expenses to which they may be put and compensation for any loss which they may sustain by reason of any such damage or interference but nothing in this paragraph shall impose any liability on the undertaker with respect to any damage, costs, expenses

or loss which is attributable to the act, neglect or default of the company or their servants, contractors or agents.

(8) The undertaker shall at all times afford reasonable facilities to the engineer for access to the specified works during their construction and shall supply him with all such information as he may reasonably require with regard to the specified works or the method of construction thereof.

(9) The company shall at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by the company under this paragraph during their construction and shall supply the undertaker with such information as it may reasonably require with regard to such works or the method of construction thereof.

(10) If any alterations or additions, either permanent or temporary, to designated property shall be reasonably necessary during the construction of the specified works or during a period of 12 months after the completion thereof in consequence of the construction of the specified works, such alterations and additions may be effected by the company at a reasonable cost after not less than 28 days' notice in writing (save in case of emergency whereupon the engineer shall give such notice as is reasonable in the circumstances) from the date of submission of plans, programmes and estimates of costs of such alterations and additions having been given to the undertaker, and the undertaker shall pay to the company on demand the cost thereof as certified by the engineer.

(11) The undertaker shall repay to the company all costs, charges and expenses reasonably incurred by the company—

- (a) in respect of the approval by the engineer of plans submitted by the undertaker;
- (b) in constructing any part of the specified works on behalf of the undertaker as provided by sub-paragraph (4) above or in constructing any protective works under the provisions of sub-paragraph (5) above;
- (c) in respect of the employment of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, watching, lighting and signalling any railway of the company and for preventing as far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works;
- (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 and which may be due to the construction or failure of the specified works or from the substitution, suspension or diversion of railway services of the company which may be necessary for the same reason;
- (e) in respect of any additional temporary lighting of designated property in the vicinity of the works, being lighting made reasonably necessary during and by reason of the construction or failure of the specified works; and
- (f) in respect of the supervision by the engineer of the specified works.

(12) Subject to paragraph (13) below, the undertaker shall be responsible for and make good to the company all costs, charges, damages and expenses not otherwise provided for in this paragraph which may be occasioned to or reasonably incurred by the company—

- (a) by reason of the specified works or the failure thereof; and
- (b) by reason of any act or omission of the undertaker or of any persons in their employ or of their contractors or others whilst engaged upon the construction of the specified works,

and the undertaker shall effectively indemnify and hold harmless the company from and against all claims and demands arising out of or in connection with the construction of the specified works or any such failure, act or omission as aforesaid and the fact that any act or thing may have been done by the company on behalf of the undertaker or in accordance with approved plans, or in accordance with any requirement of the engineer or under his supervision shall not (if it was done without negligence on the part of the company or of any person in their employ or of their contractors or agents whilst

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engaged upon the construction of the specified works) excuse the undertaker from any liability under the provisions of this paragraph.

(13) The company shall give to the undertaker reasonable notice of any claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of the undertaker.

For the protection of the Environment Agency

3.—(1) The provision of this paragraph shall have effect unless otherwise agreed in writing between the undertaker and the Environment Agency.

(2) Nothing in this Order or in any enactment incorporated with or applied by this Order shall prejudice or affect the operation of section 109 of the Water Resources Act 1991(20).

(3) Nothing in this Order or in any enactment incorporated with or applied by this Order shall be taken as permitting the undertaker to carry out works to alter the course of or otherwise interfere with, the Duke of Northumberland’s river and the Longford River.

SCHEDULE 4

Article 29

PROTECTION OF FUEL PIPELINES AND FACILITIES

PART I

Interpretation, etc.

1.—(1) For the protection of certain fuel pipelines and facilities the following provisions shall apply and have effect, unless otherwise agreed in writing between the undertaker and the participants or, as the case may be, the oil company concerned.

(2) In this Schedule, unless the subject or context otherwise requires—

“the BP/Shell lease” means the lease of certain Depots and Pipelines dated 10 August 1984 and made between the British Airports Authority, of the one part, and BP Oil Limited and Shell U.K. Limited, of the other part;

“the BP/Shell pipelines” means the whole or any part of the Pipelines, as defined in the BP/Shell lease;

“Code of Practice” means the Code of Construction Practice as for the time being in force that is intended to regulate any environmental nuisance which may be caused in the course of carrying out the works;

“construction” includes execution, placing and altering and cognate expressions shall be construed accordingly;

“the Esso lease” means the lease of a Depot and certain Pipelines dated 10 August 1984 and made between the British Airports Authority of the one part and Esso Petroleum Company Limited of the other part;

“the Esso pipelines” means the whole or any part of the Pipelines, as defined in the Esso lease;

“the hydrant systems” means the whole or any part of the Pipelines, as defined in the hydrant systems lease;

(20) 1991 c. 57.

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“the hydrant systems lease” means the lease of the hydrant systems dated 10 August 1984 and made between the British Airports Authority, of the one part, and Esso Petroleum Company Limited, Mobil Oil Company Limited, Shell U.K. Limited, BP Oil Limited, Texaco Limited, Total Oil Great Britain Limited, Elf Oil (GB) Limited, Chevron International Oil Company Limited and Petrofina (UK) Limited, of the other part, as amended by deeds dated 28 August 1987 and 28 September 1990 and by subsequent agreement;

“the Nominee” means Heathrow Hydrant Operating Company Limited, which has been nominated by the participants to act on their behalf for the purposes of Part II of this Schedule, or such other person as is nominated for the purposes of that Part or any provisions thereof by a written notice signed by all the participants and served on the undertaker;

“oil company” means BP Oil UK Limited, Shell U.K. Limited, Esso Petroleum Company Limited, Kuwait Petroleum International Aviation Company (U.K.) Limited or Heathrow Airport Fuel Company Limited;

“the participants” means the persons who have for the time being any right or interest in the hydrant systems or who (being a company concerned in the supply of fuel at the airport or in the provision of airline services thereat) have any interest in a company which has for the time being the entire leasehold interest in the hydrant systems;

“plans” includes sections, drawings, calculations, methods of construction, particulars and specifications;

“the protected property” means any fuel depot, tank farm, offices, access roads, parking areas or other facilities (together with any pipelines, apparatus or equipment located therein)—

- (a) any part of which is situated within the limits of deviation of the works or within 50 metres thereof; and
- (b) in respect of which an oil company has an interest for the time being;

“protective works” has the meaning given by paragraph 6(1) below;

“specified matter” means any of the following—

- (a) the construction, maintenance, operation or use of the works;
- (b) the construction, maintenance, operation or use of any protective works or safeguarding works;
- (c) any preparatory action in connection with any activity mentioned in paragraph (a) or (b) above;
- (d) any subsidence resulting from, or failure or want of repair of any such works as are mentioned in paragraph (a) or (b) above; and
- (e) any act or omission of the undertaker or of any person in its employ or of its agents or contractors whilst engaged upon the construction, maintenance, operation or use of any such works as are mentioned in paragraph (a) or (b) above or any preparatory action mentioned in paragraph (c) above;

“the Surveyor” means the surveyor or engineer appointed for the purposes of Part IV of this Schedule;

“the works” means the whole or any part of the works authorised by this Order including the making of any trial hole under article 8 of this Order.

(3) In this Schedule references to the relevant oil company are references to any (or, as the case may be, each) oil company which has an interest in the protected property concerned for the time being.

(4) In this Schedule references to an oil company include references to its successors in title (being a company concerned in the supply of fuel at the airport) in respect of any pipelines or protected

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property; and references to an oil company having an interest in any property include references to an oil company having an interest in a company which itself has an interest in any property.

PART II

Protection of hydrant fuelling systems

2.—(1) Notwithstanding anything in this Order, as shown on the deposited plans, the undertaker shall not pursuant to the powers of this Order acquire the hydrant systems otherwise than by agreement with the participants.

(2) The undertaker shall not exercise the powers in article 4(3)(a) in relation to the hydrant systems except in accordance with the provisions of the hydrant systems lease.

(3) The undertaker shall not exercise the powers in article 6 and article 7 in relation to the hydrant systems.

(4) The undertaker shall not exercise the powers in article 14 and article 15 to take possession of the hydrant systems, otherwise than by agreement with the participants.

3. The undertaker shall use its best endeavours—

(a) in exercising any of the powers of this Order to avoid or (failing avoidance) to minimise any damage or disruption to the hydrant systems or their operation; and

(b) without prejudice to paragraph (a) above, to ensure that the works do not at any time fall into such a condition as to compromise the integrity or operation of the hydrant systems.

4.—(1) Except in the case of trial holes or alterations, not less than five months before commencing to construct the works, the undertaker shall furnish to the Nominee a programme for the works proposed and a general indication of the nature and location of those works and, if within 28 days from the receipt by the Nominee of that programme and general indication the Nominee gives notice in writing to the undertaker that any part of the works indicated in the programme may in any way affect the hydrant systems, paragraphs 5 and 6 below shall apply with respect to that part of those works.

(2) Upon giving any notice to the undertaker under sub-paragraph (1) above the Nominee shall furnish drawings showing to the best of its knowledge the position and depth of the relevant part of the hydrant systems.

5. Not less than three months before commencing to construct the works or not less than one month before digging trial holes or making alterations to the works in either case may significantly affect the hydrant systems, the undertaker shall furnish to the Nominee plans thereof (together with a programme of the works in the case of trial holes or alterations) and shall have due regard to any representations made by the Nominee relating to such plans or to the programme for the works.

6.—(1) At any time within a period of one month, or a period of 14 days in the case of trial holes or alterations, from the receipt by the Nominee of the plans referred to in paragraph 5 above the Nominee may by notice in writing to the undertaker specify any reasonable temporary or permanent works or measures (the “protective works”) which in its reasonable opinion should be carried out or taken by the undertaker before the commencement of or during the construction of the works in order to ensure the stability of the hydrant systems (shown where applicable on the drawings furnished by the Nominee under paragraph 4(2) above) or to protect them from injury (including injury by subsidence) and such protective works shall be constructed by the undertaker at its own expense and under the inspection (if any) of the Nominee.

(2) Except in the case of protective works that the Nominee has informed the undertaker in writing may be carried out during the construction of the works, the undertaker shall not commence the construction of any work within fifteen metres of, or which may in any way affect, the hydrant systems until the protective works relating to that work have been completed to the reasonable satisfaction of the Nominee.

(3) In the case of protective works of which the Nominee has informed the undertaker in writing as mentioned in sub-paragraph (2) above, the undertaker shall comply with all reasonable requirements of the Nominee arising from its inspection under sub-paragraph (1) above as promptly as practicable after the undertaker has been notified of such requirements.

(4) Except in an emergency (when it shall give such notice as may be reasonably practicable) the undertaker shall give the Nominee not less than 14 days' notice of its intention to carry out any works for the repair or maintenance of the protective works in so far as such works may affect or interfere with the hydrant systems.

7.—(1) The undertaker shall from time to time supply the Nominee with all such information as the Nominee may reasonably require in relation to operations relating to or connected with the works which may interfere with any measures to which this sub-paragraph applies.

(2) Sub-paragraph (1) above applies to measures for providing or preserving cathodic protection for apparatus forming part of the hydrant systems which have been taken by any of the participants or upon which the Nominee has consulted the undertaker.

8.—(1) The undertaker shall repay to the Nominee and any participant the reasonable expenses incurred by the Nominee or that participant in or in connection with the preparation of any drawing or notice referred to in paragraph 4(2) or 6(1) above and the watching and inspecting of—

- (a) any protective works relating to the hydrant systems; and
- (b) any of the works (including maintenance works) which are near to or are likely to affect the hydrant systems.

9.—(1) If by reason or in consequence of any specified matter any damage, disruption or interference to the hydrant systems or the operation or use thereof shall be caused or the Nominee or any participant shall carry out any works, take any measures or install any ancillary apparatus (other than additional cathodic protection) which may be reasonably necessary to prevent any such damage, disruption or interference occurring—

- (a) the undertaker shall pay reasonable compensation to each participant or the Nominee for any loss sustained or additional expense incurred by that person; and
- (b) the undertaker shall indemnify the Nominee and each participant against all claims, demands, proceedings, costs, damages and expenses which may be made, taken against or recovered from or incurred by the Nominee or that participant by reason or in consequence of any specified matter.

(2) Nothing in this paragraph shall impose any liability on the undertaker in respect of so much of any damage, loss or additional expenditure as is attributable to—

- (a) the act, neglect or default of the Nominee or any employees or any participant, or contractors of the Nominee or any participant such act, neglect or default to include, without prejudice to the generality of that expression, any failure to show upon the drawings furnished under paragraph 4(2) above to the best of the Nominee's knowledge the position and depth of the relevant part of the hydrant systems with sufficient accuracy to have enabled the undertaker by taking reasonable precautions to avoid damage or loss or the need for additional expenditure in respect of those systems; or

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(b) any work or operation carried out by or on behalf of the undertaker in accordance with the instructions of the Nominee and without negligence.

(3) The Nominee or, as the case may be, the relevant participant shall give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent in writing of the undertaker, such consent not to be unreasonably withheld or delayed.

10. The preceding provisions of this Part of this Schedule shall apply in relation to any pipelines and associated equipment lawfully installed by or for the use of the participants after the coming into force of this Order (whether or not in accordance with the hydrant systems lease) as they apply in relation to the hydrant systems.

PART III

Protection of certain pipelines

11.—(1) The provisions of Part II of this Schedule shall apply to the BP/Shell pipelines as they apply to the hydrant systems as if—

- (a) references in paragraphs 4 to 7 to the Nominee were references to BP Oil UK Limited;
- (b) other references to the Nominee and references to the participants (or any of them) were references to BP Oil UK Limited and Shell U.K. Limited or either of them, as the case may be; and
- (c) the reference in paragraph 10 to the hydrant systems lease were a reference to the BP/Shell lease.

(2) The provisions of Part II of this Schedule shall apply to the Esso pipelines as they apply to the hydrant systems as if—

- (a) references to the Nominee and the participants (or any of them) were references to the Esso Petroleum Company Limited; and
- (b) the reference in paragraph 10 to the hydrant systems lease were a reference to the Esso lease.

PART IV

Protection of certain depots

12.—(1) Before commencing construction of so much of the works as will or may affect the protected property the undertaker shall, at its own expense, appoint in the joint names of the undertaker and the relevant oil company a reputable firm of chartered building surveyors or chartered engineers to prepare a schedule of defects existing in the protected property and that firm shall submit a copy of the schedule to the undertaker and the relevant oil company.

(2) After construction of the works and at the written request of the relevant oil company a similar schedule to that prepared in accordance with paragraph 12(1) above shall be prepared by and at the expense of the undertaker in consultation with the Surveyor, but no such request may be made later than at the end of two years from the date of opening for public traffic of the railway comprised in the works and the undertaker shall not be required to prepare more than one such schedule for the protected property.

13.—(1) The undertaker shall undertake monitoring of any protected property in respect of which a schedule of defects is required to be prepared under paragraph 12(1) above, and that monitoring shall consist of precise levelling of various points on the outside of the protected property and, if necessary, monitoring crack propagation.

(2) Monitoring under sub-paragraph (1) above shall take place prior to the construction of the works and during the period that any settlement of the protected property is occurring and for a three month period after the monitoring indicates that the settlement has ceased and as soon as practicable after the monitoring results have been obtained the undertaker shall provide a copy of such results to the relevant oil company without charge.

14.—(1) The undertaker shall in the construction, maintenance, use and operation of the works employ all means which are reasonably practicable—

- (a) to minimise any settlement or damage which may be likely to be caused to the protected property including carrying out all necessary safeguarding works under article 7 in consultation with the relevant company and the Surveyor;
- (b) to ensure that the works are carried out in accordance with the Code of Practice.

(2) The undertaker shall employ all means which are reasonably practicable for the purpose of minimising any interference with power, drainage, telecommunications and other essential services as a result of the construction and maintenance of the works and the undertaker shall give immediate consideration to any complaint which may be made by the relevant oil company of such interference and use all reasonable endeavours to remedy it as soon as possible.

(3) Without prejudice to the preceding provisions of this paragraph, in exercising its powers under article 7 of this Order in relation to the protected property the undertaker shall use all means that are reasonably practicable to prevent or failing prevention to minimise any disruption to any business of the oil company concerned which is being carried on at or from that property.

15. The undertaker shall within 30 days of notice in writing to do so repay to the relevant oil company all reasonable costs, charges and expenses properly incurred by the relevant oil company (including Value Added Tax thereon in so far as the same is not recoverable by the relevant oil company) in connection with—

- (a) the services of the Surveyor under paragraph 12(2) above;
- (b) the services of architects, surveyors, engineers and other technical advisers to whom the Surveyor finds it reasonably necessary to refer in connection with this Part of this Schedule.

16.—(1) The undertaker shall not exercise the powers under article 15 of this Order in the case of the surface of the protected property.

(2) The undertaker shall in the course of the construction or maintenance of the works use all means which are reasonably practicable to avoid material interference with any access to the protected property.

17.—(1) If by reason or in consequence of any specified matter any damage, disruption or interference shall be caused to (or to the operation or use of) the protected property or if an oil company shall carry out any works, take any measures or install any ancillary apparatus which may be reasonably necessary to prevent any such damage, disruption or interference occurring—

- (a) the undertaker shall make reasonable compensation to the oil company concerned for any loss sustained or additional expense incurred by it; and
- (b) the undertaker shall indemnify the oil company concerned against all claims, demands, proceedings, costs, damages and expenses which may be made, taken against or recovered from or incurred by that oil company by reason or in consequence of any specified matter.

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(2) Nothing in this paragraph shall impose any liability on the undertaker in respect of so much of any damage, loss or additional expenditure as is attributable to the act, neglect or default of the oil company concerned or any employees or contractors of the oil company.

(3) The oil company concerned shall give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent in writing of the undertaker, such consent not to be unreasonably withheld or delayed.

PART V

Miscellaneous

18. Nothing in this Schedule shall prejudice or affect the right of any person to claim compensation in accordance with the other provisions of this Order but no person shall be entitled to any compensation by virtue of those provisions as regards so much of any damage or claim in respect of which that person is entitled to payment under this Schedule.

19. Subject to paragraph 9(2)(a) above, the fact that any work or thing has been executed or done under or for the purposes of this Order in accordance with a plan submitted to any person or in accordance with any requirement of any person or directions or award of any arbitrator under article 34 of this Order shall not relieve the undertaker from any liability for damage caused to any property or affect any claim by any person in respect of such damage.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Heathrow Airport Limited to construct works and compulsorily to acquire and use land for the purpose of making an extension to the Heathrow Express Railway from the Central Terminal Area of Heathrow Airport to the proposed site of the new Terminal 5 building. This Order also confers ancillary powers in connection with the construction and operation of that extension.

Copies of the plans and sections are available for inspection at the offices of Heathrow Airport Limited at 130 Wilton Road, London SW1V 1LQ.