
STATUTORY INSTRUMENTS

2004 No. 389

The Network Rail (West Coast Main Line) Order 2004

PART I
PRELIMINARY

Citation and commencement

1. This Order may be cited as the Network Rail (West Coast Main Line) Order 2004 and shall come into force on 4th March 2004.

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(1);

“the 1965 Act” means the Compulsory Purchase Act 1965(2);

“the 2003 Act” means the Communications Act 2003(3);

“the Applications Rules” means the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2000;

“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;

“bridleway”, “carriageway”, “footpath”, “footway”, “highway” and “highway authority” have the same meaning as in the Highways Act 1980(4);

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

“the deposited plans” means the composite plans prepared in pursuance of rule 12(1) and (5) of the Applications Rules 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 rule 12(5);

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

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

(1) 1961 c. 33.
(2) 1965 c. 56.
(3) 2003 c. 21.
(4) 1980 c. 66.

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act⁽⁵⁾;

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the Secretary of State or a Northern Ireland department is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;

“electronic communications network” and “electronic communications service” each has the same meaning as in the 2003 Act⁽⁶⁾;

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

“former PTO” means a person—

- (a) who is a provider of a public electronic communications network or a public electronic communications service which, immediately before the date on which the repeal by the 2003 Act⁽⁷⁾ of section 7 of the Telecommunications Act 1984⁽⁸⁾ comes into force, was designated as a public telecommunication system under section 9 of that Act; and
- (b) who, immediately before that date, was authorised to provide that network or service by a licence to which section 8 of that Act applied;

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

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

“Network Rail” means Network Rail Infrastructure Limited;

“operator”, in relation to an electronic communications code network, means—

- (a) the electronic communications code operator providing that network; or
- (b) the Secretary of State or a Northern Ireland department, to the extent that they are providing or proposing to provide that network;

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

“owner”, in relation to land, means, unless the context otherwise requires, 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;

“provide” and cognate expressions, in relation to an electronic communications network, an electronic communications service or associated facilities, are to be construed in accordance with section 32(4) of the 2003 Act;

“public electronic communications network” and “public electronic communications service” each has the same meaning as in Chapter 1 of Part 2 of the 2003 Act⁽⁹⁾;

(5) See section 106.

(6) See section 32.

(7) See section 406(7) and Schedule 19.

(8) 1984 c. 12.

(9) See section 151.

- “the scheduled works” means the works specified in Schedule 1 to this Order;
- “street” includes part of a street;
- “street authority”, in relation to a street, has the same meaning as in Part III of the Street Works Act;
- “the Street Works Act” means the New Roads and Street Works Act 1991⁽¹⁰⁾;
- “the tribunal” means the Lands Tribunal; and
- “working site” includes construction access.

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

(3) All directions, distances 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, distance and length and distances between points on a railway shall be taken to be measured along the railway.

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

(5) Any reference in this Order to a point identified by a letter and number shall be construed as a reference to the point so lettered and numbered on the deposited plans.

(6) References in this Order to reference points shall be construed as references to Ordnance Survey National Grid reference points.

(7) References in this Order to highways lettered FP or BR are references respectively to footpaths or bridleways.

Incorporation of Railways Clauses Consolidation Act 1845

3.—(1) The following provisions of the Railways Clauses Consolidation Act 1845⁽¹¹⁾ shall be incorporated in this Order—

- section 24 (obstructing construction of railway), subject to the modification in paragraph (3);
- section 58 (company to repair roads used by them), except for the words from “and if any question” to the end;
- section 68 (accommodation works by company);
- section 71 (additional accommodation works by owners), except for the words “or directed by such justices to be made by the company” and “or, in case of difference, as shall be authorised by two justices”;
- sections 72 and 73 (supplementary provisions relating to accommodation works);
- section 77 (presumption that minerals excepted from acquisition of land);
- sections 78 to 85E and Schedules 1 to 3 (minerals under railways), as respectively substituted and inserted by section 15 of the Mines (Working Facilities and Support) Act 1923⁽¹²⁾;
- section 145 (recovery of penalties); and
- section 154 (transient offenders).

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

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

⁽¹⁰⁾ 1991 c. 22.

⁽¹¹⁾ 1845 c. 20.

⁽¹²⁾ 1923 c. 20.

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

“the special Act” means this Order.

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

PART II

WORKS PROVISIONS

Principal Powers

Power to construct and maintain certain works

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

(2) Subject to article 6, 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) Network Rail may on the land specified in columns (1) and (2) of Schedule 2 to this Order carry out and maintain any works specified in relation to that land in column (3) of that Schedule with all necessary works and conveniences in connection therewith.

Power to construct and maintain ancillary works

5.—(1) Subject to paragraph (3), Network Rail may do such of the following as may be necessary or expedient for the purposes of, in connection with or in consequence of, the construction of the authorised works, namely—

- (a) construct and maintain such offices and other buildings, yards, machinery, plant, apparatus and other works and conveniences as Network Rail thinks fit;
- (b) make, provide and maintain all such approaches, bridges, subways, interchanges, roundabouts, turning places, lifts, stairs, escalators, ramps, passages, means of access, shafts and stagings as Network Rail thinks fit;
- (c) make junctions and communications (including the provision of steps or ramps for the use of persons on foot) with any highway or access way intersected or interfered with by, or contiguous to, any of those works, and widen or alter any highway or access way for the purpose of connecting it with any of those works or another highway, or of crossing under or over the highway or access way;
- (d) construct, provide and maintain all such embankments, aprons, abutments, retaining walls, wing walls, culverts and other works as may be necessary or convenient;
- (e) alter or remove any structure erected upon any highway or adjoining land;
- (f) alter the position of apparatus, including mains, sewers, drains and cables; and
- (g) alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses.

(2) Subject to paragraph (3), Network Rail may carry out and maintain such other works (of whatever nature) as may be necessary or expedient for the purposes of, in connection with or in consequence of, the construction of the authorised works.

- (3) Paragraphs (1) and (2)—
- (a) shall only authorise the carrying out or maintenance of works outside the limits of deviation for the scheduled works if the works are carried out on land specified in columns (1) and (2) of Schedule 2 to this Order for the purpose specified in relation to that land in column (3) of that Schedule; and
 - (b) shall not authorise the carrying out or maintenance of works to alter the course of, or otherwise interfere with, navigable rivers or watercourses.
- (4) Any power authorised by paragraph (1)(c) which affects a highway shall not be exercised without the written consent of the relevant highway authority, but such consent shall not be unreasonably withheld.
- (5) Network Rail may within the Order limits—
- (a) carry out and maintain landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised works; and
 - (b) carry out and maintain works for the benefit or protection of land affected by the authorised works.

Power to deviate

- 6.—(1) In constructing or maintaining any of the scheduled works, Network Rail may—
- (a) deviate laterally from the lines or situations shown on the deposited plans within the limits of deviation for that work shown on those plans; and
 - (b) deviate vertically from the levels shown on the deposited sections—
 - (i) in the case of Work Nos. 2A, 3, 3A, 3B, 4, 6, 7, 7A, 8, 9, 9A, 10, 10A, 10B, 10C, 11, 12, 13A, 13B and 14 to any extent not exceeding 0.75 metres upwards or downwards; and
 - (ii) in the case of any of the remaining works, to any extent not exceeding 3 metres upwards or downwards.
- (2) In constructing or maintaining the temporary vehicular bridges referred to in article 28(2), Network Rail may deviate vertically from the levels shown on the deposited sections—
- (a) in the case of the bridge referred to in article 28(2)(a), to any extent not exceeding 0.75 metres upwards or downwards; and
 - (b) in the case of the bridge referred to in article 28(2)(b), to any extent not exceeding 0.75 metres upwards.

Level Crossings

Replacement of road level crossing

- 7.—(1) Subject to paragraph (3), the level crossing specified in columns (1) and (2) of Schedule 3 to this Order shall be stopped up and discontinued.
- (2) Subject to paragraph (3) and paragraph 2 of Schedule 12 to this Order, upon the stopping up and discontinuance of the level crossing referred to in paragraph (1), any right of way over the part of the street specified in relation to it in column (3) of Schedule 3 to this Order shall be extinguished.
- (3) Paragraphs (1) and (2) shall not take effect with respect to the level crossing until the accommodation works specified in relation to it in column (4) of Schedule 3 to this Order have been completed to the reasonable satisfaction of the street authority and are open for use.

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

Replacement of footpath level crossings

8.—(1) Subject to paragraph (3), each specified footpath shall be stopped up and discontinued.

(2) Subject to paragraph (3) and paragraph 2 of Schedule 12 to this Order, upon the stopping up and discontinuance of a specified footpath, any right of way over it shall be extinguished.

(3) Paragraphs (1) and (2) shall not take effect with respect to a footpath specified in columns (1) and (3) of Schedule 4 to this Order until the footpath specified in relation to it in column (4) of that Schedule is open for use in accordance with the reasonable requirements of the highway authority.

(4) In providing the footpaths specified in column (4) of Schedule 4 to this Order, Network Rail may within the Order limits erect barriers and signs and carry out or provide any ancillary works or conveniences, subject to the agreement of the highway authority which agreement shall not be unreasonably withheld.

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

(6) In this article “specified footpath” means any of the footpaths or lengths of footpath specified in columns (1) and (3) of Schedule 4 to this Order which are crossed on the level by Network Rail’s railway at the level crossings specified in column (2) of that Schedule.

Accommodation crossings

9.—(1) Subject to paragraphs (3) and (4) and notwithstanding anything in section 68 of the Railways Clauses Consolidation Act 1845 as incorporated in the Trent Valley Railway Act 1845(13) or any other enactment or instrument, all private rights of way (if any) across the West Coast Main Line railway by means of the accommodation facilities in the district of Lichfield, in the county of Staffordshire, specified in paragraph (2), shall be extinguished.

(2) The accommodation facilities referred to in paragraph (1) are—

- (a) Comberford Level Crossing, between points C1 and C2;
- (b) Tamborn Park Farm Underbridge 88, between points C3 and C4; and
- (c) Overbridge 90, between points C5 and C6.

(3) Paragraph (1) shall not take effect with respect to the extinguishment of the private rights of way by means of the level crossing specified in paragraph (2)(a) until the alternative accommodation access has been provided.

(4) Paragraph (1) shall not take effect with respect to the extinguishment of the accommodation crossings specified in paragraph (2)(b) and (c) until Work Nos. 9 and 9A have been completed.

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

(6) In this article, “alternative accommodation access” means the access to be provided, specified in column (3) of Schedule 2 to this Order, on the land numbered 248 on the deposited plans in the borough of Tamworth, in the county of Staffordshire and on the land numbered 2, 5 and 8 in the district of Lichfield.

Streets

Power to execute street works

10.—(1) Network Rail may, for the purposes of the authorised works, enter upon so much of any of the streets specified in Schedule 5 to this Order as is within the Order limits and may—

- (a) place apparatus in the street,
 - (b) maintain apparatus in the street or change its position, and
 - (c) execute any works required for or incidental to any works referred to in sub-paragraphs (a) and (b) (including, in particular, breaking up or opening the street, or any sewer, drain or tunnel under it, or tunnelling or boring under the street).
- (2) This article is subject to paragraph 3 of Schedule 12 to this Order.
- (3) In this article “apparatus” has the same meaning as in Part III of the Street Works Act.

Permanent stopping up of streets and extinguishment of rights

11.—(1) Subject to the provisions of this article, Network Rail may, in connection with the construction of the authorised works, permanently stop up each of the streets specified in columns (1) and (2) of Parts I and II of Schedule 6 to this Order to the extent specified in column (3) of those Parts of that Schedule.

(2) Subject to paragraph (5), no street specified in columns (1) and (2) of Part I of Schedule 6 to this Order shall be wholly or partly stopped up under this article unless—

- (a) the new street to be substituted for it, and which is specified in relation to it in column (4) of that Part of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route, which has been approved by the street authority (such approval not to be unreasonably withheld), is available between the commencement and termination points of the street to be stopped up pending completion of the new street in accordance with sub-paragraph (a).

(3) No street specified in columns (1) and (2) of Part II of Schedule 6 to this Order shall be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the relevant land; and for this purpose “relevant land” means any land which abuts on either side of the street to be stopped up.

(4) The condition referred to in paragraph (3) is that—

- (a) Network Rail is in possession of the land,
- (b) there is no right of access to the land from the street concerned,
- (c) there is reasonably convenient access to the land otherwise than from the street concerned, or
- (d) the owners and occupiers of the land have agreed to the stopping up.

(5) In the case of the stopping up of footpath FP 1R/2293 between points F9 and F10—

- (a) paragraph (2) shall not apply, and
- (b) the new street to be substituted for that part of that footpath which is specified in relation to it in column (4) of Part I of Schedule 6 shall be completed to the reasonable satisfaction of the street authority as soon as reasonably practicable after the completion of the relevant part of Work Nos. 1 and 2.

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

- (a) all rights of way over or along the street so stopped up shall be extinguished (other than, in the case of Ludgate/Tennyson Avenue between points F1/S1 and F2/S2 and Roman Way between points F18/S3 and S4, in the borough of Tamworth, a right of way on foot); and
- (b) Network Rail may, without making any payment but subject to sections 77 to 85E of, and Schedules 1 to 3 to, the Railways Clauses Consolidation Act 1845 (which relate to minerals under railways) appropriate and use for the purposes of its railway undertaking so much of the site of the street as is bounded on both sides by land owned by Network Rail.

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

(8) This Article is subject to paragraph 2 of Schedule 12 to this Order and is without prejudice to articles 7 and 8.

Temporary stopping up of streets

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

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

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

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

(4) Without prejudice to the generality of paragraph (1), Network Rail may exercise the powers conferred by this article in relation to the streets specified in columns (1) and (2) of Schedule 7 to this Order within the Order limits.

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

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

(6) The provisions of the Street Works Act mentioned in paragraph (7), and any regulations made, or code of practice issued or approved under, those provisions shall apply (with the necessary modifications) in relation to the stopping up, alteration or diversion of a street by Network Rail under the powers conferred by this article where no street works are executed in that street as they would apply if the stopping up, alteration or diversion were occasioned by street works executed in that street by Network Rail.

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

- section 54 (advance notice of certain works);
- section 55 (notice of starting date of works);
- section 59 (general duty of street authority to co-ordinate works);
- section 60 (general duty of undertakers to co-operate);
- section 69 (works likely to affect other apparatus in the street);
- section 76 (liability for cost of temporary traffic regulation);
- section 77 (liability for cost of use of alternative route); and

all such other provisions as apply for the purposes of the provisions mentioned above.

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

Temporary parking restrictions

13.—(1) Subject to the provisions of this article, Network Rail may prohibit or restrict the waiting or the loading or unloading of vehicles on the specified roads for the purpose of enabling or facilitating access over those roads by vehicles used in the construction of Work Nos. 1 and 2.

(2) A prohibition or restriction under paragraph (1) shall apply for such period of time as shall be determined by Network Rail to be necessary for the purposes of the construction of Work Nos. 1 and 2 and may apply at all times during that period or at such times, on such days or during such periods as may be determined by Network Rail.

(3) Network Rail shall not exercise the powers of this article unless it has—

- (a) consulted with the traffic authority in whose area the roads are situated;
- (b) given not less than 12 weeks' notice in writing of its intention so to do to the chief officer of police and to the traffic authority; and
- (c) advertised its intention in such manner as the traffic authority may, within 28 days of its receipt of notice of the undertakers' intention, specify in writing.

(4) Any prohibition or restriction made by Network Rail under paragraph (1) shall have effect as if duly made by the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act.

(5) In this article—

- (a) “the 1984 Act” means the Road Traffic Regulation Act 1984⁽¹⁴⁾;
- (b) “specified roads” means Cherry Street and Cross Street, in the borough of Tamworth, in the county of Staffordshire; and
- (c) expressions used in this article and the 1984 Act shall have the same meaning as in that Act.

Access to works

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

- (a) form and lay out means of access, or improve existing means of access, to the streets specified in columns (1) and (2) of Schedule 8 to this Order at or about the points marked “A”; and
- (b) with the approval of the highway authority (such approval not to be unreasonably withheld), form and lay out means of access, or improve existing means of access, at such other locations within the Order limits as Network Rail reasonably requires for the purposes of the authorised works.

Construction and maintenance of new or altered streets

15.—(1) Any street to be constructed under this Order shall be completed to the reasonable satisfaction of the highway authority and shall, unless otherwise agreed, be maintained by and at the expense of Network Rail for a period of 24 months from its completion and at the expiry of that period—

- (a) in the case of a highway, by and at the expense of the highway authority; and

(14) 1984 c. 27.

(b) in the case of a new private access, by and at the expense of the owners and occupiers.

(2) Where a street is altered or diverted under this Order, the altered or diverted part of the street shall when completed to the reasonable satisfaction of the street authority, unless otherwise agreed, be maintained by and at the expense of Network Rail for a period of 24 months from its completion and at the expiry of that period by and at the expense of the street authority.

(3) Paragraphs (1) and (2) do not apply in relation to the structure of any bridge or tunnel carrying a street over or under any railway of Network Rail.

(4) Nothing in this article shall prejudice the operation of section 87 of the Street Works Act (prospectively maintainable highways); and Network Rail shall not by reason of any duty under this article to maintain a street be taken to be the street authority in relation to that street for the purposes of Part III of that Act.

(5) Nothing in this article shall have effect in relation to street works as respects which the provisions of Part III of the Street Works Act apply.

Construction of bridges and tunnels

16. Any bridge or tunnel to be constructed or reconstructed under this Order for carrying a highway over or under a railway shall be constructed or reconstructed in accordance with plans and specifications approved by the highway authority, but such approval shall not be unreasonably withheld.

Agreements with street authorities

17.—(1) A street authority and Network Rail may enter into agreements with respect to—

- (a) the construction of any new street (including any structure carrying the street over or under a railway) under the powers conferred by this Order;
- (b) the maintenance of the structure of any bridge or tunnel carrying a street over or under a railway;
- (c) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
- (d) the execution in the street of any of the works referred to in article 10(1).

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

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

Supplemental powers

Temporary closure of part of Coventry Canal

18.—(1) In this article “the waterway” means so much of the Coventry Canal and the towing path, numbered 191 to 195 on the deposited plans, at Huddlesford in the district of Lichfield in the county of Staffordshire as lies within the Order limits.

(2) Network Rail, during and for the purpose of the construction of Work Nos. 1, 2 and 12 and the bridge referred to in article 28(2), may temporarily close and de-water any part of the waterway and divert barges and other boats from any part of the waterway.

(3) During the period of the closure referred to in paragraph (2), all rights of navigation along, and obligations of the British Waterways Board to maintain for navigation, the waterway or part thereof so closed shall be suspended and unenforceable against the British Waterways Board.

(4) Any person who suffers loss by the suspension of any right under this article shall be entitled to be paid by Network Rail compensation, to be determined in the case of dispute by the tribunal.

Discharge of water

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

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

(5) Network Rail 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⁽¹⁵⁾.

(7) In this article—

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

Protective works to buildings

20.—(1) Subject to the following provisions of this article, Network Rail may at its own expense and from time to time carry out such protective works to any building within the Order limits and lying within 35 metres of any of the authorised works as Network Rail considers to be necessary or expedient.

(2) Protective works may be carried out—

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

(15) 1991 c. 57.

(3) For the purpose of determining how the functions under this article are to be exercised Network Rail may enter and survey any building falling within paragraph (1) and any land belonging to it.

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

- (a) enter the building and any land 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).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building;
- (c) a right under paragraph (4)(a) to enter a building or land; or
- (d) a right under paragraph (4)(b) to enter land,

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

(6) Where notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 44.

(7) Network Rail 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.

(8) Where—

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

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

(9) Nothing in this article shall relieve Network Rail from any liability to pay compensation under section 10(2) of the 1965 Act.

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

(11) In this article—

- (a) “building” includes any structure or erection or any part of a building, structure or erection;
- (b) any reference to a building within a specified distance of a work includes—
 - (i) in the case of a work under the surface of the ground, a reference to any building within the specified 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 the specified distance of the proposed site of the work; and
- (c) “protective 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 which has been caused to the building by the construction, maintenance or operation of the authorised works.

Power to survey and investigate land

- 21.**—(1) Network Rail may for the purposes of this Order—
- (a) survey or investigate any land within the Order limits;
 - (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions as it thinks fit on any such land to investigate the nature of the surface layer and subsoil and remove soil samples;
 - (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on any such land;
 - (d) place on, leave on and remove from the land apparatus for use in connection with the exercise of any of the powers conferred by sub-paragraphs (a) to (c); and
 - (e) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (d).
- (2) No land may be entered, or equipment placed or left on or removed from the land under paragraph (1), unless at least 7 days' notice has been served on every owner and occupier of the land.
- (3) Any person entering land under this article on behalf of Network Rail—
- (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) No trial holes shall be made under this article in a carriageway or footway without the consent of the street authority, but such consent shall not be unreasonably withheld.
- (5) Network Rail 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 1961 Act.
- (6) Nothing in this article shall obviate any need to obtain scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979(16).

PART III

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

- 22.**—(1) Subject to paragraph (2), Network Rail may acquire compulsorily—

(a) so much of the land shown on the deposited plans within the limits of deviation for the scheduled works shown on those plans and described in the book of reference as may be required for or in connection with the authorised works; and

(b) so much of the land specified in columns (1) and (2) of Schedule 2 to this Order as may be required for the purpose specified in relation to that land in column (3) of that Schedule, and may use any land so acquired for those purposes or for any other purposes connected with or ancillary to its railway undertaking.

(2) Network Rail shall not under the powers of this Order acquire compulsorily any interest in the land delineated on the deposited plans and thereon numbered—

- (a) 109b, 159b, 159c, 210, 211, 212, 213 and 214 in the borough of Tamworth and 176a, 177, 178a, 179, 203a and 203b in the district of Lichfield; and
- (b) 160, 161, 197c, 200a, 202a, 202b, 202c, 202d, 202e, 203a, 205a, 205b, 206a, 239a and 240 in the borough of Tamworth and 176c, 178d and 203d in the district of Lichfield,

except that Network Rail may enter upon and take temporary possession of the land specified in article 36(3) in accordance with that provision.

(3) Notwithstanding paragraph (2), Network Rail may, pursuant to article 24, compulsorily acquire easements or other rights over the land described in paragraph (2)(b).

(4) This article is subject to articles 26, 28(9) and 38.

Application of Part I of Compulsory Purchase Act 1965

23.—(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(17) 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.

Power to acquire new rights

24.—(1) Subject to article 22(2)(a), Network Rail may compulsorily acquire such easements or other rights over any land referred to in paragraph (1)(a) or (b) of article 22 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 9 to this Order), where Network Rail acquires a right over land under paragraph (1) it shall not be required to acquire a greater interest in it.

(17) 1981 c. 67.

(3) Schedule 9 to this Order shall have effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right.

(4) In relation to land to which this paragraph applies, article 22, so far as relating to the acquisition or creation of easements or other rights by virtue of paragraph (1), shall be treated as also authorising acquisition by a statutory utility in any case where the Secretary of State gives his consent in writing.

(5) Paragraph (4) applies to land within the Order limits which is or will be required for use in relocating any apparatus which it is expedient to divert or replace in consequence of the carrying out of the works authorised by this Order; and in that paragraph “statutory utility” means a licence holder within the meaning of Part I of the Electricity Act 1989⁽¹⁸⁾, a public gas transporter within the meaning of Part I of the Gas Act 1986⁽¹⁹⁾, a water undertaker within the meaning of the Water Industry Act 1991⁽²⁰⁾, a sewerage undertaker within the meaning of Part I of that Act and any local authority which is a relevant authority for the purposes of section 97 of that Act.

Power to acquire subsoil only

25.—(1) Subject to article 22(2), Network Rail may compulsorily acquire so much of the subsoil of the land referred to in paragraph (1)(a) or (b) of article 22 as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where Network Rail acquires any part of the subsoil of land under paragraph (1) it shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) shall not prevent article 30 from applying where Network Rail acquires a cellar, vault, arch or other construction forming part of a house, building or factory.

Cases where powers of acquisition limited to soil nailing rights

26.—(1) This article applies to the land specified in Schedule 10 to this Order.

(2) In the case of land to which this article applies, Network Rail’s powers of compulsory acquisition under article 22 shall be limited to the acquisition of soil nailing rights in the subsoil of so much of the land as lies within ten metres of land owned by Network Rail.

(3) Where Network Rail acquires soil nailing 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) In this article “soil nailing rights” means rights to insert soil nails into the subsoil or to carry out other subsoil works for the purposes of strengthening and stabilising the railway cutting.

(5) References in this article to the subsoil of land are references to the subsoil lying more than one metre 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; or
- (b) in any other case, ground surface level.

⁽¹⁸⁾ 1989 c. 29.

⁽¹⁹⁾ 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45).

⁽²⁰⁾ 1991 c. 56.

Rights under streets

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

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

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

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

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

Temporary possession of land

Temporary use of land for construction of works

28.—(1) Subject to paragraph (13), Network Rail may, in connection with the carrying out of the authorised works—

- (a) enter upon and take temporary possession of the land specified in columns (1) and (2) of Schedule 11 to this Order for the purpose specified in relation to that land in column (3) of that Schedule relating to the works or the facilities (or any of those works or facilities) so specified in column (4) of that Schedule;
- (b) remove any buildings and vegetation from that land; and
- (c) construct temporary works (including the provision of means of access) and buildings on the land.

(2) Without prejudice to the generality of paragraph (1)(c), Network Rail may, in connection with the carrying out of the authorised works, construct—

- (a) a temporary vehicular bridge over the river Tame on the land numbered 22, 34 and 42 on the deposited plans in the district of Lichfield, in the county of Staffordshire; and
- (b) a temporary vehicular bridge over the Coventry Canal on the land numbered 183, 193 and 196 on the deposited plans at Huddlesford in the district of Lichfield, in the county of Staffordshire,

in accordance with the levels shown on the deposited sections but subject to the power to deviate in article 6(2).

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

(4) Subject to paragraph (13), Network Rail may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the work or works, or the date of the provision of the facility or facilities, specified in relation to that land in column (4) of Schedule 11 to this Order.

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

(6) Network Rail 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), or as to the amount of the compensation, shall be determined under Part I of the 1961 Act.

(8) Without prejudice to article 43, 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).

(9) Subject to paragraph (10), the powers of compulsory acquisition of land conferred by this Order shall not apply in relation to the land referred to in paragraph (1).

(10) Network Rail shall not be precluded from acquiring over any part of the land referred to in paragraph (1)—

- (a) new rights under article 24, or
- (b) soil nailing rights under article 26.

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

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

(13) Where, in relation to land specified in columns (1) and (2) of Schedule 11 to this Order, the purpose specified in column (3) of that Schedule in relation to that land is a right of access—

- (a) references in this article to entering upon and taking possession of land shall be construed as references to using the land as an access and related expressions shall be construed accordingly; and
- (b) paragraphs (1)(b) and (c) and (4) shall not apply.

Compensation

Disregard of certain interests and improvements

29.—(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) “relevant land” means the land acquired from the person concerned or any other land with which he is, or was at the time when the building was erected, the works executed or the improvement or alteration made, directly or indirectly concerned.

Supplementary

Acquisition of part only of certain properties

30.—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 23) 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 Network Rail 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 Network Rail 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 Network Rail is authorised to acquire compulsorily under this Order.

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

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

the notice to treat 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 Network Rail 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,

Network Rail may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, 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, Network Rail 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

31.—(1) All private rights of way over land held and used by Network Rail for the purposes of the authorised works or subject to compulsory acquisition under this Order shall be extinguished—

- (a) as from the use by Network Rail of the land for the purposes of the authorised works;
- (b) as from the acquisition of the land by Network Rail, whether compulsorily or by agreement; or
- (c) on the entry on the land by Network Rail under section 11(1) of the 1965 Act,

whichever is sooner.

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

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

(4) This article does not apply in relation to any right of way to which section 271 or 272 of the Town and Country Planning Act 1990(21) (extinguishment of rights of statutory undertakers etc.) or paragraph 2 of Schedule 12 to this Order applies.

(5) This article does not apply in relation to any private right of way over—

- (a) land specified in columns (1) and (2) of Schedule 2 to this Order, or
- (b) land specified in columns (1) and (2) of Schedule 11 to this Order,

where the purpose specified in column (3) of that Schedule in relation to that land is a right of access, except where, or to the extent that, the private right of way is inconsistent with the exercise of the right of access acquired by Network Rail under this Order.

Time limit for exercise of powers of acquisition

32.—(1) No notice to treat shall be served under Part I of the 1965 Act, as applied to the acquisition of land under article 23 after the end of the period of 5 years beginning with the day on which this Order comes into force.

(2) The power conferred by article 28 to enter upon and take temporary possession of land shall cease at the end of the period mentioned in paragraph (1); but this paragraph shall not prevent Network Rail remaining in possession of land in accordance with article 28 after the end of that period, if the land was entered and possession of it was taken before the end of that period.

(21) 1990 c. 8.

PART IV

MISCELLANEOUS AND GENERAL

Noise

Defence to proceedings in respect of statutory nuisance

33.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990⁽²²⁾ (summary proceedings by persons aggrieved by statutory nuisances) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order shall be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows—

- (a) that the nuisance relates to premises used by Network Rail for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works; and
 - (b) that the nuisance is attributable to the carrying out of works which are being carried out in accordance with a notice served under section 60, or a consent given under section 61 or 65, of the Control of Pollution Act 1974⁽²³⁾.
- (2) The following provisions of the Control of Pollution Act 1974, namely—
- (a) section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990); and
 - (b) section 65(8) (corresponding provision in relation to consent for registered noise level to be exceeded),

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

Miscellaneous and supplementary

Certain land to be treated as operational land

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

Maintenance of approved works etc.

35.—(1) Where pursuant to regulations⁽²⁴⁾ made under section 41 of the 1992 Act (approval of works, plant and equipment) 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.

⁽²²⁾ 1990 c. 43.

⁽²³⁾ 1974 c. 40.

⁽²⁴⁾ See S.I. 1994/157.

(2) If without reasonable cause the provisions of paragraph (1) are contravened, Network Rail 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.

Public open space and common land

36.—(1) As from the latest of—

- (a) the date on which this Order comes into force,
- (b) the date on which the special category land is vested in Network Rail, or
- (c) the date on which the exchange land is vested in Network Rail,

the exchange land shall vest in the borough of Tamworth.

(2) Upon the vesting of the exchange land in the borough of Tamworth—

- (a) the special category land shall be discharged from all rights, trusts and incidents to which it was previously subject; and
- (b) the exchange land shall be subject to the like rights, trusts and incidents as attached to the special category land.

(3) The provisions of article 28 shall apply in relation to the entering upon and taking temporary possession of the land delineated on the deposited plans and thereon numbered 97, 109b, 159b, 159c, 160, 161, 197c, 200a, 202a, 202b, 202c, 202d, 202e, 203a, 205a, 205b, 206a, 239a and 240 in the borough of Tamworth and 176a, 176c, 177, 178a, 178d, 179, 203a, 203b and 203d in the district of Lichfield as if—

- (a) the land numbered 97, 159b, 159c, 160 and 161 in the borough of Tamworth and 176a, 176c, 177, 178a, 178d, 179, 203a, 203b and 203d in the district of Lichfield were specified in columns (1) and (2) of Schedule 11 to this Order for the purpose of use as working sites and accesses in relation to Work Nos. 1 and 2;
- (b) the land numbered 109b in the borough of Tamworth were specified in columns (1) and (2) of Schedule 11 to this Order for the purpose of use as a working site and access in relation to Work Nos. 1, 2 and 4; and
- (c) the land numbered 197c, 200a, 202a, 202b, 202c, 202d, 202e, 203a, 205a, 205b, 206a, 239a and 240 in the borough of Tamworth were specified in columns (1) and (2) of Schedule 11 to this Order for the purpose of use as working sites and accesses in relation to Work No. 5.

(4) As from the later of—

- (a) the date on which this Order comes into force, or
- (b) the date on which the land delineated on the deposited plans and thereon numbered 176b, 178b, 178c and 203c in the district of Lichfield, or any part of it, is vested in Network Rail,

that land or that part of it which is vested (as the case may be) shall be discharged from all rights, trusts and incidents to which it was previously subject.

(5) As from the later of—

- (a) the date on which this Order comes into force, or
- (b) the date on which any easement or other right over the land delineated on the deposited plans and thereon numbered 176c, 178d and 203d in the district of Lichfield is vested in Network Rail,

the land over which the easement or right is acquired shall be discharged from all rights, trusts and incidents to which it was previously subject so far as their continuance would be inconsistent with the exercise of that easement or other right.

(6) In this article—

“the special category land” means the land delineated on the deposited plans and thereon numbered 98, 109a, 150, 159a, 197a, 197b and 269 in the borough of Tamworth; and

“the exchange land” means the land delineated on the deposited plans and thereon numbered 252 and 253 in the borough of Tamworth.

Disclosure of confidential information

37. A person who—

(a) enters a factory, workshop or workplace in pursuance of the provisions of article 20 or 21; 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.

Saving for regulated rights etc.

38. Nothing in this Order shall affect any estate, right or interest granted by Network Rail in respect of a railway facility which is subject to an access contract within the meaning of Part I of the Railways Act 1993⁽²⁵⁾.

Statutory undertakers etc.

39. The provisions of Schedule 12 to this Order shall have effect.

Protective provisions

40. The provisions of Schedule 13 to this Order shall have effect.

Certification of plans etc.

41. Network Rail 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, deposited sections and deposited plans referred to in this Order; and a document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

42.—(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.

(25) 1993 c. 43, to which there are amendments not relevant to this article.

(3) For the purposes of section 7 of the Interpretation Act 1978⁽²⁶⁾ 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) 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

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

Arbitration

44. 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

Ellis Harvey
Head of the Transport and Works Act Orders
Unit,
Department for Transport

12th February 2004