
STATUTORY INSTRUMENTS

2006 No. 3117

The Network Rail (Thameslink 2000) Order 2006

PART 1

Citation and commencement

1. This Order may be cited as the Network Rail (Thameslink 2000) Order 2006 and shall come into force on 13th December 2006.

Interpretation

2.—(1) In this Order, unless the context otherwise requires—

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

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

“the 1973 Act” means the Land Compensation Act 1973(3);

“the 2003 Act” means the Communications Act 2003(4);

“the Applications Rules” means the Transport and Works (Applications and Objections Procedure) Rules 1992(5) made under sections 6, 7 and 10 of the 1992 Act;

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

“Blackfriars bridge” means the railway bridge over the river Thames at Blackfriars in the City of London and London borough of Southwark;

“the Blackfriars works” means Works Nos. 3 and 4 and the station and other works authorised by article 7 (station works at Blackfriars);

“the book of reference” means the book of reference described in rule 7(5) of the Applications Rules 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(6);

“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 plans prepared in pursuance of rule 7(1)(a) and (3) 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 7(3);

(1) 1961 c. 33.
(2) 1965 c. 56.
(3) 1973 c. 26.
(4) 2003 c. 21.
(5) S.I. 1992/2902.
(6) 1980 c. 66.

“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;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(7);

“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(8);

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

“the Farringdon works” means Work No. 2 and the other works at Farringdon station comprising extensions of the Thameslink Railway platforms, extension of the station footbridge with access to Turnmill Street and works for the pedestrianisation of part of Cowcross Street, a new station booking hall and concourse and electricity substation;

“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 of section 7 of the Telecommunications Act 1984 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;

“the London Bridge works” means Works Nos. 8, 9, 10, 11, 13 and 14 and the station and other works authorised by article 9 (further works at London Bridge) or any of those works;

“LUL” means London Underground Limited;

“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;

(7) See section 106.

(8) See section 32.

“the Order limits” means any of the limits of deviation or the limits of land to be acquired or used, or, in relation to Work No. 12, the line marked “Extent of bridge and viaduct widening”, shown on the deposited plans;

“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;

“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;

“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 3 of the Street Works Act;

“the Street Works Act” means the New Roads and Street Works Act 1991(9);

“tidal work” means so much of any work authorised by this Order as is in, on, under or over tidal waters or tidal lands below the level of mean high water springs;

“the tribunal” means the Lands Tribunal; and

“Trinity House” means the Corporation of Trinity House of Deptford Strond.

(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) References in this Order to points identified by letters, with or without numbers, shall be construed as references to the points so lettered on the deposited plans.

Incorporation of Railways Clauses Consolidation Act 1845

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

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

section 46 (crossing of roads—level crossings—bridges) subject to the modification in paragraph (4);

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”;

(9) 1991 c. 22.

(10) 1845 c. 20.

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⁽¹¹⁾;
 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;

“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.

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

(4) In section 46 of the said Act of 1845, as incorporated in this Order, for the proviso there shall be substituted the words “Provided always, that, with the consent of the highway authority and subject to such conditions as the authority may reasonably impose, the railway may be carried across a highway on the level”.

PART 2

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 (power to deviate), 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—

(a) on the land specified in columns (1) and (2) of Part 1 of Schedule 2 (additional works and lands) to this Order, carry out and maintain the works specified in relation to that land in column (3) of that Part of that Schedule;

(b) at each of the stations specified in column (1) of Part 2 of Schedule 2 to this Order and on the land specified in relation to that station in column (2) of that Part of that Schedule, carry out and maintain the works (being station works) specified in relation to that station in column (3) of that Part of that Schedule;

(11) 1923 c. 20.

- (c) on the land specified in columns (1) and (2) of Part 3 of Schedule 2 to this Order, carry out and maintain the works (being works relating to power reinforcement) specified in relation to that land in column (3) of that Part of that Schedule; and
- (d) on the land specified in columns (1) and (2) of Part 4 of Schedule 2 to this Order, carry out and maintain the works (being works relating to signalling equipment) specified in relation to that land in column (3) of that Part of that Schedule;

with all necessary works and conveniences in connection therewith.

(4) In the said Part 3 of Schedule 2, “electrical equipment” means equipment in the supply of traction current to the railway.

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 purposes ancillary to 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;
- (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 purposes ancillary to 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 Part 1, 2, 3 or 4 of Schedule 2 (additional works and lands) to this Order for the purpose specified in relation to that land in column (3) of that Part 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. 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 relating to that work shown on those plans or, in the case of Work No. 20, within a distance of 10 metres on either side of the line of that work shown on those plans; and
 - (b) deviate vertically from the levels shown on the deposited sections—
 - (i) in the case of Works Nos. 1, 2, 12, 22, 23 and 24, to any extent not exceeding 0.75 metres upwards,
 - (ii) in the case of Works Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14 and 21, to any extent not exceeding one metre upwards or downwards,
 - (iii) in the case of any of the remaining works, to any extent not exceeding three metres upwards or downwards.

Station works at Blackfriars

7.—(1) Network Rail may, at Blackfriars in the City of London and the London borough of Southwark in the construction of Works Nos. 3, 4, 5, and 6, and within the limits of deviation for those works—

- (a) alter and extend Blackfriars station with all necessary works and conveniences connected therewith, including a canopy over Network Rail’s platforms at that station;
- (b) provide a station pedestrian access incorporating a lift and staircase and a footbridge over Queen Victoria Street between points D1 and D2 connecting with a high level walkway to Network Rail’s platforms at Blackfriars Station;
- (c) stop up the footpath between points F1 and F2 and construct a new footpath between points F1, F3, F4 and F2.

(2) In constructing or maintaining the footbridge referred to in paragraph (1)(b), Network Rail may deviate vertically from the levels shown on the deposited section to any extent not exceeding 0.75 metres upwards or downwards.

Appropriation of works near Blackfriars Bridge

8.—(1) In this article—

“the new works” means the station canopy comprised in the Blackfriars works;

“the original works” means the disused bridge piers alongside Blackfriars bridge and such other works and premises authorised by the 1860 Act as are within the limits of deviation for Works Nos. 3, 4, 5 and 6;

“the 1860 Act” means the London, Chatham and Dover Railway (Metropolitan Extensions) Act 1860⁽¹²⁾.

(2) If Network Rail proceeds with the construction of the new works it may do either or both of the following—

- (a) hold, use and appropriate such parts of the original works as it may require for the purposes of the new works or for any purpose ancillary to its undertaking;

(12) 1860 c. clxxvii.

(b) take down and remove such parts of the original works as it does not require for those purposes,
and all the powers and obligations conferred or imposed upon Network Rail by the 1860 Act in relation to such parts of the original works including the obligation to maintain them shall cease to have effect.

Further works at London Bridge

9. Network Rail may, at London Bridge in the London borough of Southwark, in the construction of Works Nos. 13 and 14 or either of them and within the limits of deviation for those works form, alter or extend platforms at Network Rail’s London Bridge station with all necessary works and conveniences connected therewith, including the alteration of the station footbridge, the train shed and the bus interchange.

Disapplication of provision relating to land at Puddle Dock, Blackfriars

10.—(1) In this article “the particular provision” means clause 2(22)(d) of the Underlease dated 11th July 1985 of land and premises at Puddle Dock, Blackfriars, in the City of London made between The Provost and Scholars of the King’s College of Our Lady and Saint Nicholas in Cambridge of the one part and the British Railways Board of the other part, the term of years granted by which Underlease is now vested in Network Rail.

(2) Nothing in the particular provision or in any other provision having the same or similar effect shall prevent Network Rail from constructing and maintaining the Blackfriars works.

Disapplication of enactments relating to the Borough Market, Southwark

11. Network Rail may exercise any power conferred by this Order relating to or affecting any land forming part of the Borough Market in the London borough of Southwark notwithstanding any provision in section 62 or 63 of the Charing Cross Railway Act 1859(13) or any other enactment contained in a private Act of Parliament; and, accordingly, any such provision shall cease to have effect to the extent that it would be inconsistent with the exercise by Network Rail of any such power.

Release from obligations relating to footway at Bermondsey

12. Network Rail shall cease to be under any obligation (whether imposed by section 9 (as to certain footways) of the South Eastern Railway Act 1896(14) or otherwise) to provide, maintain or light a footway between Silwood Street and Trundleys Road in the London borough of Lewisham; and in this article “footway” has the same meaning as in the said Act of 1896.

Disapplication of enactment relating to Balcombe Bridge

13.—(1) In this article “Balcombe Bridge” means the bridge (numbered by Network Rail 145) in the Parish of Balcombe, District of Mid Sussex, County of West Sussex carrying the London to Brighton Railway over Rocks Lane.

(2) Nothing in section 44 (for protection of East Sussex County Council) of the British Transport Commission Act 1960(15), which relates to Balcombe Bridge, shall apply in relation to Work No. 23 or any other authorised works relating to Balcombe Bridge.

(13) 1859 c. lxxxi.

(14) 1896 c. cxxvi.

(15) 1960 c. xlvi.

Streets

Power to execute street works

14.—(1) Network Rail may, for the purposes of the authorised works, enter upon so much of any of the streets specified in Schedule 3 (streets subject to street works) to this Order as is within the Order limits and may—

- (a) place apparatus in the street;
- (b) maintain apparatus in the street or change its position; and
- (c) execute any works required for or incidental to the authorised works or any works referred to in sub-paragraphs (a) and (b) (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 9 (provisions relating to statutory undertakers etc.) to this Order.

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

Permanent stopping up of streets

15.—(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 1 and 2 of Schedule 4 (streets to be permanently stopped up) to this Order to the extent specified in column (3) of that Schedule.

(2) The street specified in columns (1) and (2) of Part 1 of Schedule 4 (streets to be permanently stopped up) to this Order (being a street to be stopped up for which a substitute is to be provided) shall not be wholly or partly stopped up under this article unless—

- (a) the new street to be substituted for it, and which is specified 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 2 of Schedule 4 (streets to be permanently stopped up) to this Order (being a street to be stopped up for which no substitute is to be provided) 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; or
- (b) there is no right of access to the land from the street concerned; or
- (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) Network Rail may for the purposes of, or for purposes ancillary to, the authorised works in the London borough of Islington, narrow Turnmill Street between points N1 and N2 and Cowcross Street between points N3 and N4; and stop up the portions of those streets lying outside the narrowings.

(6) Network Rail may for the purposes of, or for purposes ancillary to, the authorised works—

- (a) in the London borough of Southwark, install stanchions in any part of Enid Street which lies between points N1 and N2 and any part of Almond Road which lies between points N3 and N4; and
- (b) in the London borough of Lambeth, install stanchions in any part of Waterloo Road which lies between points N1 and N2;

and stop up those streets to the extent occupied by those works.

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

- (a) all rights of way over or along the street so stopped up (other than, in the case of a stopping up under paragraph (1), a right on foot) shall be extinguished; 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(16) (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.

(8) 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 1 of the 1961 Act.

(9) This article is subject to paragraph 2 of Schedule 9 (provisions relating to statutory undertakers etc.) to this Order.

Temporary stopping up of streets

16.—(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 of this article—

- (a) in relation to the streets specified in columns (1) and (2) of Schedule 5 (streets to be temporarily stopped up) to this Order within the Order limits; and
- (b) in the London borough of Southwark, in relation to so much of Southwark Street as lies between its junction with Southwark Bridge Road and Redcross Way; but so that the provisions of paragraph (2) shall not apply.

(5) Network Rail shall not exercise the powers of 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 any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Access to works

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

- (a) form and lay out means of access, or improve existing means of access, to the streets specified in columns (1) and (2) of Schedule 6 (access to works) 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 such 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.

(2) The provisions of paragraph (1)(a) in respect of Turnmill Street and Farringdon Road in the London borough of Islington and Withdean Road/Station Road in the City of Brighton and Hove shall extend only to the formation and laying out of pedestrian access or improving existing means of pedestrian access.

Construction and maintenance of new or altered streets

18.—(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 by and at the expense of the highway authority.

(2) Where a street is altered or diverted under this Order, the altered or diverted part of the street 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) Except as provided in this article and notwithstanding anything in section 46 of the Railways Clauses Consolidation Act 1845(17) as incorporated in this Order, Network Rail shall not be liable to maintain the surface of any highway under or over which the scheduled works shall be constructed, or the immediate approaches to any such highway.

(5) 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 3 of that Act.

(6) Nothing in this article shall have effect in relation to street works as respects which the provisions of Part 3 of the Street Works Act apply.

Construction of bridges and tunnels

19. 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

- 20.**—(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 carrying a street over 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 14(1) (power to execute street works).
- (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

Discharge of water

21.—(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⁽¹⁸⁾.

(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, a joint planning board, an urban development corporation or a harbour authority within the meaning of the Harbours Act 1964⁽¹⁹⁾;
- (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

22.—(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.

(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 and any land belonging to it;
- (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

⁽¹⁸⁾ 1991 c. 57.

⁽¹⁹⁾ 1964 c. 40.

to carry out the protective works or to enter the building or land to be referred to arbitration under article 51 (arbitration).

(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 1 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 etc.

23.—(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 any of the powers conferred by sub-paragraphs (a) to (d).

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

(3) Any person entering land under this article on behalf of 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 1 of the 1961 Act.

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

24.—(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 Part 1, 2, 3 or 4 of Schedule 2 (additional works and land) 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 ancillary to its railway undertaking.

(2) Network Rail shall not under the powers of this Order acquire compulsorily any interest in the land numbered 397, 536 and 542 on the deposited plans in the London borough of Southwark.

(3) Network Rail shall not under the powers of this Order acquire compulsorily any greater interest in the land numbered 540 in the London borough of Southwark than is necessary—

(a) as a means of access over London Bridge Street for the construction of the London Bridge works; and

(b) to carry out any related protective works to strengthen the cellar roofs comprising part of that land numbered 540.

(4) This article is subject to articles 29(8) (temporary use of land for construction of works) and 34 (saving for regulated rights etc.).

Application of Part 1 of the Compulsory Purchase Act 1965

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

- (a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981(20) applies; and
 - (b) as if this Order were a compulsory purchase order under that Act.
- (2) Part 1 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

26.—(1) Network Rail may compulsorily acquire such easements or other rights over any land referred to in paragraph (1)(a) or (b) of article 24 (power to acquire land) as may be required for any purpose for which that land may be acquired under that provision, by creating them as well as by acquiring easements or other rights already in existence.

(2) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 7 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.

(3) Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights) 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 24 (power to acquire land), 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 1 of the Electricity Act 1989(21), a gas transporter within the meaning of Part 1 of the Gas Act 1986(22), a water undertaker within the meaning of the Water Industry Act 1991(23), a sewerage undertaker within the meaning of Part 1 of that Act and any local authority which is a relevant authority for the purposes of section 97 of that Act.

Powers to acquire subsoil only

27.—(1) Network Rail may compulsorily acquire so much of the subsoil of the land referred to in paragraph (1)(a) or (b) of article 24 (power to acquire land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(20) 1981 c. 67.

(21) 1989 c. 29.

(22) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995, c. 45, and was further amended by section 76 of the Utilities Act 2000, c. 27.

(23) 1991 c. 56.

(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 31 (acquisition of part only of certain properties) from applying where Network Rail acquires a cellar, vault, arch or other construction forming part of a house, building or factory.

Rights under streets

28.—(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 ancillary to its railway undertaking.

(2) Subject to paragraph (4), 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), Network Rail shall not be required to pay any compensation for the exercise of the powers conferred by paragraph (1) where the street is a highway; but where the street is not a highway any owner or occupier of subsoil suffering loss by the entry upon and appropriation of such subsoil shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) Paragraphs (2) and (3) 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.

(5) Nothing in paragraph (3) shall relieve Network Rail from liability to compensate any person under section 10(2) of the 1965 Act or under Part 1 of the 1973 Act as applied by this Order, arising from the exercise of the powers conferred by paragraph (1).

Temporary possession of land

Temporary use of land for construction of works

29.—(1) 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 8 (land of which temporary possession may be taken) to this Order for the purpose specified in relation to that land in column (3) of that Schedule relating to the authorised works (or any of those works) so specified in column (4) of that Schedule;
- (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 Network Rail shall serve notice of the intended entry on the owners and occupiers of the land.

(3) Network Rail may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the work specified in relation to that land in column (4) of Schedule 8 (land of which temporary possession may be taken) to this Order.

(4) 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.

(5) 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.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.

(7) Without prejudice to article 50 (no double recovery), 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).

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

- (a) acquiring new rights over any part of that land under article 26 (power to acquire new rights); or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 27 (power to acquire subsoil only),

but this paragraph shall not apply in relation to parcel numbers 114 and 116 shown on the deposited plans in the London borough of Southwark.

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

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

Compensation

Disregard of certain interests and improvements

30.—(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.

Supplementary

Acquisition of part only of certain properties

31.—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 25 (application of Part 1 of the Compulsory Purchase Act 1965(24)) in any case where—

(24) 1965 c. 56.

- (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 to the owner compensation for any loss or expense occasioned to him by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or factory or of land consisting of a house with a park or garden, 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

32.—(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 for the purposes of the authorised works of the land held by Network Rail;
- (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 1 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⁽²⁵⁾ (extinguishment of rights of statutory undertakers etc.) or paragraph 2 of Schedule 9 (provisions relating to statutory undertakers etc.) to this Order applies.

(5) Paragraphs (1) and (2) shall have effect subject to any agreement made (whether before or after this Order comes into force) between Network Rail and the person entitled to the private right of way.

(6) Paragraph (1) shall have effect subject to any notice given by Network Rail that that paragraph shall not apply to any right of way specified in the notice where the notice is given before whichever is the soonest of the events specified in sub-paragraph (a), (b) or (c) of that paragraph.

(7) Paragraph (2) shall have effect subject to any notice given by Network Rail at any time before or after possession is taken that that paragraph shall not apply to any right of way specified in the notice or shall only apply to the right of way to the extent specified in the notice.

Time limit for exercise of powers of acquisition

33.—(1) No notice to treat shall be served under Part 1 of the 1965 Act, as applied to the acquisition of land under article 25 (application of Part 1 of the Compulsory Purchase Act 1965) 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 29 (temporary use of land for construction of works) 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

(25) 1990 c. 8.

accordance with article 29 after the end of that period, if the land was entered and possession of it was taken before the end of that period.

Saving for regulated rights etc.

34. 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 1 of the Railways Act 1993⁽²⁶⁾.

Saving for estate and interests of Transport for London

35.—(1) In this article—

“Exemption Order” means the Railways (London Regional Transport) (Exemptions) Order 1994⁽²⁷⁾;

“TfL Company” has the same meaning as in article 2 of the Exemption Order as amended by section 198 of the Greater London Authority Act 1999⁽²⁸⁾;

“the 1993 Act” means the Railways Act 1993⁽²⁹⁾, and

“relevant facilities” means—

- (a) any network on which, or any station or part of a station from which, no regular scheduled railway passenger services are provided other than by a TfL Company;
- (b) any light maintenance depot which is not used in connection with the provision, other than by a TfL Company, of railway passenger services; and
- (c) any train—
 - (i) being used on any such network as is mentioned in paragraph (a) for any purpose relating to the operation of that network, or for a purpose preparatory or incidental to, or consequential on, any such use; or
 - (ii) being used on a network for a purpose preparatory or incidental to, or consequential on, the provision of light maintenance service at any such light maintenance depot as is mentioned in paragraph (b),

which at the date of coming into force of this Order are exempted from specified provisions of Part 1 of the 1993 Act by virtue of the Exemption Order.

(2) Nothing in this Order shall prejudice the exemptions conferred on a TfL Company under articles 3 and 4 of the Exemption Order in respect of relevant facilities.

(3) Expressions used in this article and in Part 1 of the 1993 Act shall have the same meaning in this article as in that Act.

⁽²⁶⁾ 1993 c. 43.

⁽²⁷⁾ S.I. 1994/573, as amended by the Greater London Authority Act 1999, section 198 and by S.I. 2003/1615, article 48.

⁽²⁸⁾ 1999 c. 29.

⁽²⁹⁾ 1993 c. 43.

PART 4

MISCELLANEOUS AND GENERAL

Noise

Defence to proceedings in respect of statutory nuisance

36.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990⁽³⁰⁾ (summary proceedings by person aggrieved by statutory nuisance) 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⁽³¹⁾.
- (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.

Tidal works in river Thames

Tidal works not to be executed without approval of Secretary of State

37.—(1) A tidal work shall not be constructed, reconstructed, extended, enlarged, replaced or relaid except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by him before the work is begun.

(2) If a tidal work is constructed, reconstructed, extended, enlarged, replaced or relaid in contravention of paragraph (1) or of any condition or restriction imposed under the said paragraph—

- (a) the Secretary of State may by notice in writing require Network Rail at its own expense to remove the tidal work or any part thereof and restore the site thereof to its former condition; and, if on the expiration of 30 days from the date when the notice is served upon Network Rail it has failed to take reasonable steps to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice; or
- (b) if it appears to the Secretary of State urgently necessary so to do, he may remove the tidal work, or part of it, and restore the site to its former condition,

and any expenditure incurred by the Secretary of State in so doing shall be recoverable from Network Rail.

⁽³⁰⁾ 1990 c. 43.

⁽³¹⁾ 1974 c. 40.

Lights on tidal works during construction

38.—(1) Network Rail shall at or near a tidal work during the whole time of the construction, reconstruction, extension, enlargement, replacement or relaying thereof, exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as the Secretary of State shall from time to time direct.

(2) If Network Rail fails to comply in any respect with any direction given under this article, it shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Provision against danger to navigation

39.—(1) In case of injury to or destruction or decay of a tidal work or any part thereof Network Rail shall as soon as reasonably practicable notify Trinity House and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House shall from time to time direct.

(2) If Network Rail fails to notify Trinity House as required by paragraph (1) or to comply with any requirement of a direction given under the said paragraph it shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Abatement of works abandoned or decayed

40.—(1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State may by notice in writing require Network Rail at its own expense either to repair and restore the work or any part thereof, or to remove the work and restore the site thereof to its former condition, to such an extent and within such limits as the Secretary of State thinks proper.

(2) Where a work consisting partly of a tidal work and partly of works on or over land above the level of mean high water springs is abandoned or suffered to fall into decay and that part of the work on or over land above the level of mean high water springs is in such condition as to interfere or to cause reasonable apprehension that it may interfere with the right of navigation or other public rights over the foreshore, the Secretary of State may include that part of the work, or any portion thereof, in any notice under this article.

(3) If, on the expiration of 30 days from the date when a notice under this article is served upon Network Rail, it has failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice and any expenditure incurred by him in so doing shall be recoverable from Network Rail.

Survey of tidal works

41. If the Secretary of State deems it expedient to do so, the Secretary of State may order a survey and examination of a tidal work or of the site upon which it is proposed to construct the work, and any expenditure incurred by the Secretary of State in any such survey and examination shall be recoverable from Network Rail.

Permanent lights on tidal works

42.—(1) After the completion of a tidal work Network Rail shall at the outer extremity thereof exhibit every night from sunset to sunrise such lights, if any, and take such other steps, if any, for the prevention of danger to navigation as Trinity House shall from time to time direct.

(2) If Network Rail fails to comply in any respect with a direction given under paragraph (1) it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Miscellaneous

Agreement with Transport for London

43.—(1) In this article—

“affected properties” means any land which is owned by a TfL Company or in which a TfL Company has a legal estate or an interest;

“designated works” means so much of the authorised works as will be constructed under, on or over any of the affected properties; and

“TfL Company” means Transport for London or any subsidiary of Transport for London including LUL.

(2) Any works of alteration or adaptation of affected properties which may be necessary in order to construct the designated works and thereafter, the use, maintenance, operation and renewal of such property and of the designated works shall be carried out and regulated by Network Rail or a TfL Company, or by Network Rail and a TfL Company jointly, in accordance with such terms and conditions as may be agreed in writing between Network Rail and a TfL Company.

(3) An agreement made under this article may relate to the whole or part of the affected properties and may contain such incidental, consequential or supplementary provisions as may be so agreed, including (but without prejudice to the generality of the foregoing) provisions—

(a) with respect to the defraying of, or the making of contributions towards, the cost of such works of alteration or adaptation or the costs of such use, maintenance and renewal as are referred to in paragraph (2) by Network Rail or by a TfL Company or by Network Rail and a TfL Company jointly; and

(b) for the exercise by a TfL Company or by Network Rail or by a TfL Company and Network Rail jointly, of all or any of the powers and rights of a TfL Company and Network Rail (as the case may be) in respect of any part of the designated works under any enactment or contract.

(4) The exercise by Network Rail or a TfL Company or by Network Rail and a TfL Company jointly, of any powers and rights under any enactment or contract pursuant to any such agreement as is authorised by sub-paragraph (3)(b) shall be subject to all statutory and contractual provisions relating thereto as would apply if such powers and rights were exercised by Network Rail or a TfL Company alone, or by Network Rail and a TfL Company jointly, as the case may be.

(5) Network Rail and a TfL Company may enter into, and carry into effect, agreements for the transfer to and vesting in Network Rail, or a TfL Company and Network Rail jointly of—

(a) any part of the affected properties;

(b) any lands, works or other property held in connection with any part of the affected properties; and

(c) any rights and obligations (whether or not statutory) of a TfL Company relating to any part of the affected properties.

Certain land to be treated as operational land

44. Planning permission which is deemed by a direction under section 90(2A) of the Town and Country Planning Act 1990(32) 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).

Disclosure of confidential information

45. A person who—

- (a) enters a factory, workshop or workplace in pursuance of the provisions of article 22 (protective works to buildings) or 23 (power to survey and investigate land etc.); 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.

46. The provisions of Schedule 9 (provisions relating to statutory undertakers etc.) to this Order shall have effect.

Protective provisions

47. The provisions of Schedule 10 (protective provisions) to this Order shall have effect.

Certification of plans etc.

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

Service of notices

49.—(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(33) 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.

(33) 1978 c. 30.

(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

50. 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

51. Any difference under any provision of this Order, unless otherwise provided for, 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

22nd November 2006