
STATUTORY INSTRUMENTS

2015 No. 2044

The London Underground (Bank
Station Capacity Upgrade) Order 2015

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the London Underground (Bank Station Capacity Upgrade) Order 2015 and comes into force on 12th January 2016.

Interpretation

2. In this Order—

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

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

“the 1984 Act” means the Road Traffic Regulation Act 1984(3);

“the 1980 Act” means the Highways Act 1980(4);

“the 1990 Act” means the Town and Country Planning Act 1990(5);

“the 1991 Act” means the New Roads and Street Works Act 1991(6);

“the 2004 Act” means the Traffic Management Act 2004(7);

“the access to works and permanent stopping up of streets plan” means the plan certified by the Secretary of State as the access to works and permanent stopping up of streets plan for the purposes of this Order;

“address” includes any number or address used for the purposes of electronic transmission;

“authorised railway” means the railway forming part of the authorised works;

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

“Bank station” means the Bank Monument Station Complex comprising Bank and Monument London Underground stations which serve the Company’s District, Circle, Waterloo & City, Central and Northern Lines and Bank station serving the Docklands Light Railway including all platforms, subways, passages, ticket halls and station entrances and exits serving those stations;

(1) 1961 c. 33.
(2) 1965 c. 56.
(3) 1984 c. 27.
(4) 1980 c. 66.
(5) 1990 c. 8.
(6) 1991 c. 22.
(7) 2004 c. 18.

“building” includes any structure or erection or any part of a building, structure or erection;

“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;

“carriageway” has the same meaning as in the 1980 Act;

“the Company” means London Underground Limited (Company registration number 01900907) whose registered office is Windsor House, 42-50 Victoria Street, London SW1H 0TL;

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means but while in electronic form;

“footway” has the same meaning as in the 1980 Act;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“the land plan” means the plan certified by the Secretary of State as the land plan for the purposes of this Order;

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

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

“the Order limits” means the limits of land to be acquired or used shown on the land plan and described in the book of reference;

“owner”, in relation to land, has the same meaning as in the Acquisition of Land Act 1981(8);

“pile interception works” means works to remove, modify, reconstruct, alter, replace or interfere with piles, caissons, foundations and other subterranean structures which may otherwise obstruct or interfere with the construction of Works Nos.1, 4, or 19;

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

“the sections” means the sections certified by the Secretary of State as the sections for the purposes of 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 1991 Act;

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

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“the works plans” means the plans certified by the Secretary of State as the works plans for the purposes of this Order.

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

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

Incorporation of Railways Clauses Acts

3.—(1) The following provisions of the Railways Clauses Consolidation Act 1845⁽⁹⁾ are incorporated in this Order—

section 58⁽¹⁰⁾ (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”;

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

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

sections 78 to 85E⁽¹¹⁾ 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 103⁽¹³⁾ and 104 (refusal to quit carriage at destination);

section 105 (carriage of dangerous goods on railway); and

section 145⁽¹⁴⁾ (recovery of penalties).

(2) Section 12 (signals, watchmen etc.) of the Railways Clauses Act 1863⁽¹⁵⁾ is incorporated in this Order.

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

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

“lease” includes an agreement for a lease;

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

“the railway” means any railway authorised to be constructed by this Order and any other authorised works;

“the special Act” means this Order; and

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

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

4.—(1) Works executed under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of Part 3 (street works in England and Wales) of the 1991 Act as major transport works if—

⁽⁹⁾ 1845 c. 20.

⁽¹⁰⁾ Section 58 was amended by section 46 of, and part 3 of Schedule 7 to, the Justices of the Peace Act 1949 (c. 101).

⁽¹¹⁾ Section 84, as substituted, was amended by part 3 of Schedule 7 to the Justices of the Peace Act 1949 (c. 101) and section 46 of the Criminal Justice Act 1982 (c. 48). Section 85C, as substituted, was amended by virtue of section 17(2)(a) of the Interpretation Act 1978 (c. 30).

⁽¹²⁾ 1923 c. 20.

⁽¹³⁾ Section 103 was amended by the Statute Law Revision Act 1892 (c. 19), part 3 of Schedule 7 to the Justices of the Peace Act 1949 (c. 101) and section 46 of the Criminal Justice Act 1982 (c. 48).

⁽¹⁴⁾ Section 145 was amended by the Statute Law Revision Act 1892 (c. 19) and part 2 of Schedule 12 to the Transport Act 1962 (c. 46).

⁽¹⁵⁾ 1863 c. 92.

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of that Act (which defines what highway authority works are major highway works); or
- (b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64(16) of the 1980 Act (dual carriageways and roundabouts).

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

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

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

(4) The provisions of the 1991 Act mentioned in paragraph (5) which, together with other provisions of that Act, apply in relation to the execution of street works and any regulations made or code of practice issued or approved under those provisions apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the Company under the powers conferred by article 13 (temporary stopping up and diversion of streets) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act(17) referred to in paragraph (4) are—

- section 54(18) (advance notice of certain works), subject to paragraph (6);
- section 55(19) (notice of starting date of works), subject to paragraph (6);
- section 57(20) (notice of emergency works);
- section 59(21) (general duty of street authority to co-ordinate works);
- section 60 (general duty of undertakers to co-operate);
- section 68 (facilities to be afforded to street authority);
- section 69 (works likely to affect other apparatus in the street);
- section 76 (liability for cost of temporary traffic regulation);
- section 77 (liability for cost of use of alternative route); and

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

(16) As amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and Schedule 9 to the New Roads and Street Works Act 1991 (c. 22).

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

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

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

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

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

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (5) have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

(7) Nothing in article 15 (construction and maintenance of new or altered streets)—

- (a) affects the operation of section 87 of the 1991 Act (prospectively maintainable highways); and the Company is not by reason of any duty under that article to maintain a street to be taken to be a street authority in relation to that street for the purposes of Part 3 of that Act; or
- (b) has effect in relation to street works with regard to which the provisions of Part 3 of the 1991 Act apply.

Disapplication and modification of legislative provisions

5. Section 6 of the Ecclesiastical Jurisdiction Measure 1963(22), section 7 of the Faculty Jurisdiction Measure 1964(23) and Part 3 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991(24) do not apply to anything done under the powers conferred by this Order in relation to the lands numbered 108, 109 and 110 shown on the land plan.

PART 2

WORKS PROVISIONS

Principal powers

Power to construct and maintain works

6.—(1) The Company may construct and maintain the scheduled works.

(2) Subject to article 7 (power to deviate), the scheduled works may only be constructed in the lines or situations shown on the works plans and in accordance with the levels shown on the sections.

(3) Subject to paragraph (5), the Company may carry out and maintain such of the following works as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works, namely—

- (a) works for the strengthening, alteration or demolition of any building;
- (b) works to alter the position of apparatus, including mains, sewers, drains and cables;
- (c) works to erect and construct such offices and other buildings, electrical plant and machinery, apparatus, and other works and conveniences as the Company thinks fit;
- (d) make, provide and maintain all such approaches, lifts, stairs, escalators, ramps, passages, adits, head walls, retaining structures, means of access, shafts and stages as the Company thinks fit;
- (e) railway lines, electrification and signalling works and telecommunications works;
- (f) works to strengthen any subway;
- (g) works to alter the course of, or otherwise interfere with watercourses and wells;
- (h) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the scheduled works; and

(22) 1963 No. 1

(23) 1964 No. 5

(24) 1991 No. 1

- (i) works for the benefit or protection of land or premises affected by the scheduled works.
- (4) Subject to paragraph (5), the Company may carry out such other works (of whatever nature) as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works, other than works that would interfere with a navigable watercourse.
- (5) Paragraphs (3) and (4) only authorise the carrying out or maintenance of works outside of the limits of deviation if such works are carried out—
 - (a) on any of the streets specified in Schedule 2 to this Order (streets subject to street works); or
 - (b) on land specified in columns (1) and (2) of Schedule 8 (land of which temporary possession may be taken) for the purposes specified in column (3) of that Schedule.
- (6) In constructing Works Nos.1, 4 and 19 the Company may carry out pile interception works.

Power to deviate

- 7. In constructing or maintaining any of the scheduled works, the Company may—
 - (a) deviate laterally from the lines or situations shown on the works plans to the extent of the limits of deviation for that work; and
 - (b) deviate vertically from the levels shown on the sections—
 - (i) to any extent not exceeding 3 metres upwards; or
 - (ii) to any extent downwards as may be found to be necessary or convenient.

Station works at Bank

8. The Company may, in the construction of Work No. 1, and within the limits of deviation alter and extend Bank station with all necessary works and conveniences connected with that Work, including the construction of a new passenger platform, enlarged passenger circulating areas and a new station entrance on Cannon Street, in the City of London.

Streets

Power to alter layout, etc., of streets

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

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

(2) The powers conferred by paragraph (1) in relation to any street abutting the Order limits or which has a junction with such a street must not be exercised without the consent of the street authority, but such consent must not be unreasonably withheld although it may be given subject to reasonable conditions including in relation to paragraph (3)(b) conditions to preserve the integrity of the City of London Corporation's Traffic and Environmental Zone.

(3) Without limitation on the scope of the powers conferred under this article, the Company may—

- (a) temporarily remove or relocate bollards, gates or any other obstruction preventing the passage of vehicular traffic along and over Sherborne Lane delineated on the land plan and shown numbered 91;
 - (b) temporarily remove or relocate bollards, gates or any other obstruction preventing the passage of vehicular traffic along and over the designated land; and
 - (c) provide a controlled pedestrian crossing in Cannon Street within the Order limits.
- (4) In this article—
- (a) “the designated land” means—
 - (i) the unnamed street off Laurence Pountney Lane delineated on the land plan and shown numbered 128 and 129; and
 - (ii) land at the junction of Upper Thames Street with Suffolk Lane delineated on the land plan and shown numbered 186 and 187; and
 - (b) “the City of London Corporation’s Traffic and Environmental Zone” means the security and surveillance cordon implemented by the City of London and Tower Hamlets (Prescribed Routes) Traffic Order 1994(25), the City of London (Prescribed Routes) (No1) Traffic Order 1998(26), the City of London, Hackney, Islington and Tower Hamlets (Prescribed Routes) Traffic Order 2000(27), and the City of London (Prescribed Routes) (No1) Traffic Order 2005 (28).

Power to keep apparatus in streets

10.—(1) The Company may, for the purposes of or in connection with the construction of the authorised works, alter, move, remove, place and maintain in any street within and abutting the Order limits or which has a junction with such a street, any work, equipment or apparatus including foundations, road islands, bollards, substations, electric lines, closed circuit television monitoring equipment and any other electrical equipment or other apparatus.

- (2) In this article—
- (a) “apparatus” has the same meaning as in Part 3 of the 1991 Act;
 - (b) “electric line” has the meaning given by section 64(1) of the Electricity Act 1989(29); and
 - (c) the reference to any work, equipment, apparatus or other thing in a street includes a reference to any work, equipment, apparatus or other thing under, over, along or upon the street.

Power to execute street works

11.—(1) The Company may, for the purposes of the construction of the authorised works, enter upon so much of any of the streets specified in Schedule 2 (streets subject to street works) as is within and abutting the Order limits or which has a junction with such a street and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it, or tunnel or bore under the street;
- (b) place apparatus in the street;
- (c) maintain apparatus in the street or change its position; and

(25) 1994 No. 9.
(26) 1998 No. 5.
(27) 2001 No. 5.
(28) 2005 No. 3.
(29) 1989 c. 29.

(d) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b) and (c).

(2) This article is subject to paragraph 3 of Schedule 10 (provisions relating to statutory undertakers etc.).

(3) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

Stopping up of streets

12.—(1) Subject to the provisions of this article, the Company may, in connection with the construction of the authorised works, stop up each of the streets specified in columns (1) and (2) of Schedule 3 (streets to be stopped up) to the extent specified in column (3) of that Schedule.

(2) No street specified in columns (1) and (2) of Schedule 3 (being a street to be stopped up for which no substitute is to be provided) is to be wholly or partly stopped up under this article unless the condition specified in paragraph (3) is satisfied in relation to all the land which abuts on either side of the street to be stopped up.

(3) The condition referred to in paragraph (2) is that—

- (a) the Company 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.

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

- (a) all rights of way over or along the street so stopped up are extinguished; and
- (b) the Company may appropriate and use for the purposes of its railway undertaking so much of the street so stopped up.

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

(6) This article is subject to paragraph 2 of Schedule 10 (provisions relating to statutory undertakers etc.) and paragraph 4 of Schedule 11 (protection for electricity, gas, water and sewerage undertakers).

Temporary stopping up and diversion of streets

13.—(1) The Company, during and for the purposes of the construction 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 (2), prevent all persons from passing along the street.

(2) The Company must provide reasonable access for pedestrians going to or from premises abutting a street affected by the exercise of the powers conferred by this article (or to and from any other premises accessible for pedestrians from, and only from that street) if there would otherwise be no such access.

(3) Without limitation on the scope of paragraph (1), the Company may exercise the powers conferred by this article in relation to the streets specified in columns (1) and (2) of Schedule 4 (streets to be temporarily stopped up) to the extent specified in column (3) of that Schedule.

(4) The Company must not exercise the powers conferred by this article—

- (a) in relation to any street specified as mentioned in paragraph (3) without first consulting the street authority; and
 - (b) in relation to any other street without the consent of the street authority which may attach reasonable conditions to any consent, but such consent must not be unreasonably withheld.
- (5) Without limitation on the scope of the powers conferred under this article, any part of Arthur Street, Martin Lane and that part of King William Street shown shaded on the works plan which is stopped up under this article may be used as a work site for the purposes of the construction of the authorised works.
- (6) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Access to works

- 14.** The Company may, for the purposes of the construction of the authorised works—
- (a) form and lay out means of access, or improve existing means of access, in the location specified in columns (1) and (2) of Schedule 5 (access to works) at the points marked ‘A’ on the access to works and permanent stopping up of streets plan; and
 - (b) with the approval of the highway authority after consultation with the local planning authority, such approval not to be unreasonably withheld (but may be subject to reasonable conditions), form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the Company 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 must be completed to the reasonable satisfaction of the highway authority and must be maintained by and at the expense of the Company for a period of 12 months from its completion and from 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 must be completed to the reasonable satisfaction of the street authority, and must be maintained by and at the expense of the Company for a period of 12 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 the Company.

(4) In any action against the Company in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without affecting any other defence or the application of the law relating to contributory negligence) to prove that the Company had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(5) For the purposes of a defence under paragraph (4), the court must in particular have regard to the following matters—

- (a) the character of the street and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the Company knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street;

- (e) where the Company could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant to prove that the Company had arranged for a competent person to carry out or supervise the maintenance of the part of the street to which the action relates unless it is also proved that the Company had given the competent person proper instructions with regard to the maintenance of the street and that the competent person had carried out those instructions.

Agreements with street authorities

- 16.**—(1) A street authority and the Company 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 11(1) (power to execute street works).
- (2) Such an agreement may, without limitation on the scope 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

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

(2) Any dispute arising from the exercise of the powers conferred by paragraph (1) to connect to or use a public sewer or drain is to be determined as if it were a dispute under section 106 of the Water Industry Act 1991⁽³⁰⁾.

(3) The Company must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

- (4) The Company must not make any opening into any public sewer or drain except—
- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and
 - (b) where that person has been given the opportunity to supervise the making of the opening.
- (5) (a) The Company must not, in the exercise of the powers conferred by this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(30) 1991 c. 56.

(6) The Company must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2010⁽³¹⁾.

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

(9) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Environment Agency, a local authority or a sewerage undertaker; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991⁽³²⁾ have the same meaning as in that Act.

Protective works to buildings, roads and apparatus of a statutory undertaker

18.—(1) Subject to the following provisions of this article, the Company may at its own expense carry out such protective works to—

- (a) any building; or
- (b) any road; or
- (c) any apparatus of a statutory undertaker

lying within the Order limits as the Company 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, road or apparatus of any part of the authorised works; or
- (b) after the completion of the construction of that part of the authorised works in the vicinity of the building, road or apparatus 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 the Company may (subject to paragraph (5)) enter and survey any building, go onto and survey any road or access and survey any apparatus falling within paragraph (1) and any land within the curtilage of the building or in which the apparatus is located.

(4) For the purpose of carrying out protective works under this article to a building, road or apparatus the Company may (subject to paragraphs (5) and (6))—

- (a) enter the building, go onto the road or access the apparatus and any land within the curtilage of the building or in which the apparatus is located; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building (but outside its curtilage) or adjacent to the road or land in which the apparatus is located, 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, road or apparatus;

⁽³¹⁾ S.I. 2010/675.

⁽³²⁾ 1991 c. 57.

- (b) a right under paragraph (3) to enter a building, go onto a road or access apparatus and land within the curtilage of the building or in which the apparatus is located; and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building, go onto a road or access apparatus and land within the curtilage of the building or in which the apparatus is located; or
- (d) a right under paragraph (4)(b) to enter land,

the Company must, except in the case of emergency, serve on the owners and occupiers of the building or land or the owner of the road or apparatus 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 a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land or the owner of the road or apparatus 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 50 (arbitration).

(7) The Company must compensate the owners and occupiers of any building or land or the owner of the road or apparatus in relation to which the powers conferred by this article have been exercised for any loss or damage arising to them by reason of the exercise of those powers.

(8) Where—

- (a) protective works are carried out under this article to a building, road or apparatus falling within paragraph (1); and
- (b) within the period of 5 years beginning with the day on which the part of the authorised works constructed in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building, road or apparatus against damage caused by the construction or operation of that part of the authorised works,

the Company must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Without affecting article 49 (no double recovery) nothing in this article relieves the Company from any liability to pay compensation under section 10(2) of the 1965 Act.

(10) Any compensation payable under paragraph (7) or (8) is to be determined, in case of dispute, under Part 1 of the 1961 Act.

(11) In this article—

“protective works” in relation to a building, road or apparatus means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building, road or apparatus by the construction, maintenance or operation of the authorised works; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building, road or apparatus by the construction, maintenance or operation of the authorised works; and

“road” includes any structures supporting the road.

Power to survey and investigate land

19.—(1) The Company may for the purposes of this Order—

- (a) survey or investigate any land shown within the Order limits or which may be affected by the authorised works;

- (b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions as the Company thinks fit on the land to investigate the nature of the surface layer and subsoil and remove soil samples;
 - (c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land;
 - (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes; and
 - (e) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (d).
- (2) In connection with any apparatus which may be placed or left on land under the powers conferred by paragraph (1)(d) of this article, the Company may, subject to payment, connect to and use any electrical supply on the land for the purposes of powering such apparatus.
- (3) 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.
- (4) Any person entering land under this article on behalf of the Company—
- (a) must, if so required, before or after entering the land produce written evidence of authority to do so; and
 - (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.
- (5) No trial holes are to be made under this article—
- (a) in a carriageway or footway without the consent of the highway authority; or
 - (b) in a private street without the consent of the street authority,
- but such consent must not be unreasonably withheld.
- (6) The Company must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.
- (7) Nothing in this article overrides the requirement for scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979(33).

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

20.—(1) The Company may acquire compulsorily so much of the land shown on the land plan which is within the Order limits and is included in Schedule 7 (acquisition of land and of subsoil of land only and power to impose restrictive covenants) as may be required for the purposes of the authorised works and may use the land so acquired for those purposes or for any other purposes that are ancillary to its railway undertaking.

(2) This article is subject to article 23 (power to acquire subsoil only).

Application of Part 1 of the Compulsory Purchase Act 1965

21.—(1) Part 1 of the 1965 Act, in so far as not modified by or inconsistent with the provisions of this Order, applies to the acquisition of land under this Order—

- (a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981⁽³⁴⁾ applies; and
- (b) as if this Order were a compulsory purchase order under that Act.

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

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

22.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981⁽³⁵⁾ applies as if this Order were a compulsory purchase order.

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

(3) In section 3 (preliminary notices) for subsection (1) substitute—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority must include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.”.

(4) In that section, in subsection (2), for “(1)(b)” substitute “(1)” and after “given” insert “and published”.

(5) In that section, for subsections (5) and (6) substitute—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

(6) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after “publication” insert “in a local newspaper circulating in the area in which the land is situated”; and
- (b) omit subsection (2).

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

(8) References to the 1965 Act are to be construed as references to that Act as applied to the acquisition of land under article 20 (power to acquire land).

⁽³⁴⁾ 1981 c. 67.

⁽³⁵⁾ 1981 c. 66.

Power to acquire subsoil only

23.—(1) In the case of the land specified in the table in Part 2 (land of which only subsoil may be acquired) of Schedule 7 (acquisition of land and of subsoil of land only and power to impose restrictive covenants), the Company's power under article 20(1) (power to acquire land) may, subject to paragraph (2), be exercised only in relation to so much of the subsoil or under-surface of the land as lies more than 9 metres below the level of the surface.

(2) Paragraph (1) does not prevent the Company from exercising the powers conferred by article 24(1) (power to acquire new rights) in relation to so much of the subsoil or under-surface of the land between the land lying more than 9 metres below the level of the surface of the land and the surface of the land.

(3) Where the Company acquires any part of or rights in the subsoil of land under paragraph (1) it is not required to acquire an interest in any other part of the land.

(4) Paragraph (3) does not prevent article 29 (acquisition of part of certain properties) from applying where the Company acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Power to acquire new rights

24.—(1) The Company may acquire compulsorily such easements or other rights over any land that it is empowered to acquire under paragraph (1) of article 20 (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) In the case of the land specified in the table in Part 3 (land over which restrictive covenants may be imposed) of Schedule 7 (acquisition of land and of subsoil of land only and power to impose restrictive covenants) the Company's power under article 20(1) (power to acquire land) also includes power to impose restrictive covenants over the land for the purposes specified in relation to the land in column (3) of the table.

(3) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights and power to impose restrictive covenants) where the Company acquires a right over land under paragraph (1) the Company is not required to acquire a greater interest in that land.

(4) Schedule 6 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right.

Rights under or over streets

25.—(1) The Company may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised works and may use the subsoil or air-space 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 the Company being required to acquire any part of the street or any easement or right in the street.

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

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

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

(5) Compensation is not payable under paragraph (3) to any person who is an undertaker to whom section 85 (sharing of cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary possession of land

Temporary use of land for construction of works

26.—(1) The Company 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) for the purpose specified in relation to that land in column 3 of that Schedule;
- (b) remove any buildings, street furniture and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and temporary buildings on that land; and
- (d) temporarily occupy and use air-space for the purposes of the operation of a crane in connection with the construction of the authorised works.

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

(3) The Company 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 the completion of construction of the scheduled works.

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

(5) The Company must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

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

(7) Without affecting article 49 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2) (further provision as to compensation for injurious affection) of the 1965 Act⁽³⁶⁾ 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 do not apply in relation to the land referred to in paragraph (1) except that the Company is not precluded from—

- (a) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 23 (power to acquire subsoil only); or
- (b) acquiring new rights over any part of that land under article 24 (power to acquire new rights).

⁽³⁶⁾ Section 10 was amended by section 4 of, and paragraph 13(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2009/1307.

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

(10) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act⁽³⁷⁾ applies to the temporary use of land under this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 21(1) (application of Part 1 of the Compulsory Purchase Act 1965).

Compensation

Disregard of certain interests and improvements

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

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

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

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

Set-off for enhancement in value of retained land

28.—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal must set-off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity which will accrue to that person by reason of the construction of the authorised works.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 23 (power to acquire new rights), the tribunal must set-off against the value of the rights so acquired—

- (a) any increase in the value of the land over which the new rights are required; and
- (b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity,

which will accrue to him by reason of the construction of the authorised works.

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

Supplementary

Acquisition of part of certain properties

29.—(1) This article applies instead of section 8(1) of the 1965 Act (as applied by article 21 (application of Part 1 of the Compulsory Purchase Act 1965)) in any case where—

⁽³⁷⁾ Section 13 was amended by sections 62(3) and 139 of, and paragraph 27 and 28 of Schedule 13, and part 3 of Schedule 23, to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

- (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 manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the Company a counter-notice objecting to the sale of the land subject to the notice to treat which states that the owner 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 must 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 must sell only the land subject to the notice to treat is, unless the Company agrees to take the land subject to the counter-notice, to 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 the 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 must 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 is 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 is deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the Company is authorised to acquire compulsorily under this Order.

(8) If the Company 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 is deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the Company is authorised to acquire compulsorily under this Order.

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

Company 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 must pay the owner compensation for any loss or expense occasioned to the owner 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 manufactory or of land consisting of a house with a park or garden, the Company must pay the owner 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

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

- (a) as from the date of acquisition of the land by the Company, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the Company under section 11(1) of the 1965 Act,

whichever is the sooner.

(2) In respect of land owned by the Company and required for the purposes of this Order all private rights of way are extinguished on the appropriation of the land for any of those purposes by the Company.

(3) All private rights of way over land of which the Company takes temporary possession under this Order are suspended and unenforceable for as long as the Company remains in lawful possession of the land.

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

(5) This article does not apply in relation to any right of way to which section 271 or 272 of the 1990 Act (extinguishment of rights of statutory undertakers etc.) or paragraph 2 of Schedule 10 (provisions relating to statutory undertakers etc.) applies.

Time limit for exercise of powers of acquisition

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

- (a) no notice to treat is to be served under Part 1 of the 1965 Act as applied to the acquisition of land by article 21 (application of Part 1 of the Compulsory Purchase Act 1965); and
- (b) no declaration is to be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 22 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The powers conferred by article 26 (temporary use of land for construction of works) cease at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the Company remaining in possession of land after the end of that period, if the land was entered and possession of it was taken before the end of that period.

PART 4

MISCELLANEOUS AND GENERAL

Traffic regulation

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

- (a) permit, suspend or modify the use as a parking place in the manner specified in Part 1 of Schedule 9 (traffic regulation) of those roads specified in column (1) and along the lengths, between the points and to the extent specified in columns (2) and (3) of that Part of that Schedule;
- (b) suspend the operation of the bus lanes in the manner specified in Part 2 of Schedule 9 on the roads specified in column (1) and along the lengths, between the points and to the extent specified in columns (2) and (3) of that Part of that Schedule;
- (c) suspend the pedestrian crossings in the manner specified in Part 3 of Schedule 9 on the roads specified in column (1) and at the locations specified in columns (2) and (3) of that Part of that Schedule;
- (d) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles in the manner specified in Part 4 of Schedule 9 on the roads specified in column (1) and at the location and to the extent specified in columns (2) and (3) of that Part of the Schedule
- (e) make provision as to the movement of vehicular traffic in the manner specified in Part 5 of Schedule 9 on the roads specified in column (1) and at the location and to the extent specified in columns (2) and (3) of that Part of the Schedule;
- (f) permit or prohibit driving in the manner specified in Part 6 of Schedule 9 on the roads specified in column (1) and at the location and to the extent specified in columns (2) and (3) of that Part of the Schedule; and
- (g) so far as may be necessary or expedient for the purposes of or in connection with construction of the authorised works—
 - (i) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
 - (ii) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;
 - (iii) suspend or authorise the use as a parking place of any road;
 - (iv) make provision as to the direction or priority of vehicular traffic on any road; and
 - (v) permit or prohibit vehicular access to any road,either at all times or at times, on days or during such periods as may be specified by the Company.

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

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

- (a) given not less than 4 weeks' notice in writing of its intention so to do to the chief officer of police and to the traffic authority in whose area the road is situated; and

(b) advertised its intention in such manner as the traffic authority may within 7 days of its receipt of notice of the Company's intention specify in writing.

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

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

(b) the local authority in whose area the road is situated, as an order under section 32 of the 1984 Act,

and the instrument by which it is effected may specify savings and exemptions (in addition to those mentioned in Schedule 9) to which the prohibition, restriction or other provision is subject.

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

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

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

Traffic signs

33.—(1) The Company may, for the purposes of the authorised works, place or maintain traffic signs of a type prescribed by regulations made under section 64(1)(a) (general provisions as to traffic signs) of the 1984 Act or of a character authorised by the Secretary of State on any street within the Order limits or which gives access to such a street, or on any street in connection with any instrument made under article 32 (traffic regulation) or any other street as reasonably required for conveying information to traffic.

(2) The Company—

(a) must consult with the traffic authority as to the placing of signs; and

(b) may subject to any directions given under section 65 (powers and duties of highway authorities as to placing of traffic signs) of the 1984 Act, enter into arrangements with the consent of the traffic authority for the signs to be placed and maintained by the traffic authority, such consent not to be unreasonable withheld.

(3) Any power conferred by section 65 of the 1984 Act to give directions to a traffic authority or local traffic authority as to traffic signs includes a power to give directions to the Company as to traffic signs under this article; and the powers conferred by paragraph (1) are exercisable subject to and in conformity with any directions given under that section.

(4) A traffic authority or other authority having power under or by virtue of the 1984 Act to place and maintain, or cause to be placed and maintained, traffic signs on any street referred to in paragraph (1) must consult with the Company as to the placing of any traffic signs that appear to the traffic authority may affect the authorised works.

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

Defence to proceedings in respect of statutory nuisance

34.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(**38**) (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 is to be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

- (a) relates to premises used by the Company for the purposes of or in connection with the construction or maintenance of the authorised works and that the nuisance is attributable to the carrying out of the authorised works in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) of the Control of Pollution Act 1974(**39**); or
- (b) is a consequence of the construction or maintenance of the authorised works and that it cannot reasonably be avoided.

(2) 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) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the Company for the purposes of or in connection with the construction or maintenance of the authorised works.

(3) The provisions of this article do not affect the application to the authorised works of section 122 of the Railways Act 1993(**40**) (statutory authority as a defence to actions in nuisance, etc.) or any rule of common law having similar effect.

Removal of human remains

35.—(1) In this article “the specified land” means the land within the limits of deviation and any land beneath the streets specified in Schedule 2 (streets subject to street works).

(2) Before the Company carries out any development or works which will or may disturb any human remains in the specified land it must remove those human remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.

(3) Before any such remains are removed from the specified land the Company must give notice of the intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—

- (a) publishing a notice once in each of 2 successive weeks in a newspaper circulating in the area of the authorised works; and
- (b) displaying a notice in a conspicuous place on or near to the specified land.

(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the Company must send a copy of the notice to the City of London Corporation.

(5) At any time within 56 days after the first publication of a notice under paragraph (3) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the Company of that person’s intention to undertake the removal of the remains.

(6) Where a person has given notice under paragraph (5), and the remains in question can be identified, that person may cause such remains to be—

(38) 1990 c.43. There are amendments to this Act which are not relevant to this Order.

(39) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to this Order.

(40) 1993 c.43.

- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
- (b) removed to, and cremated in, any crematorium,

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the Company a certificate for the purpose of enabling compliance with paragraph (11).

(7) If the Company is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who is to remove the remains and as to the payment of the costs of the application.

(8) The Company must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the Company in respect of any remains in the specified land; or
- (b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or
- (c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the Company, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (10) the Company is to remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the Company thinks suitable for the purpose; and, so far as possible, remains from individual graves are to be re-interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(10) If the Company is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the Company must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(11) On the re-interment or cremation of any remains under this article—

- (a) a certificate of re-interment or cremation must be sent by the Company to the Registrar General giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) must be sent by the Company to the City of London Corporation.

(12) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(13) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(14) Section 25 of the Burial Act 1857(41) (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) does not apply to a removal carried out in accordance with this article.

(41) 1857 c. 81. There are amendments to this Act which are not relevant to this Order.

Water abstraction

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

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

(3) Where—

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

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

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

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

(5) Section 48A(5) of the Water Resources Act 1991 (prohibition of claims in respect of loss or damage caused by abstraction of water which are not claims under that section) has no application to claims under this article or under Schedule 12 (protection for the Environment Agency).

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

Planning permission

37. Planning permission which is deemed by a direction under section 90(2A)(42) of the 1990 Act to be granted in relation to the authorised works is to be treated as specific planning permission for the purposes of section 264(3)(a) of that Act (cases in which land is to be treated as operational land for the purposes of that Act).

Powers of disposal, agreements for operation, etc.

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

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

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

(4) The exercise of the powers conferred by any enactment by any person further to any sale, lease, charge or disposal under paragraph (1), or any agreement under paragraph (2), is subject to the same restrictions, liabilities and obligations as would apply under this Order if those powers were exercised by the Company.

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

(5) Sections 163 (restriction on disposal of land) and 207(2) (restrictions on contracting out certain services) of the Greater London Authority Act 1999(43) do not apply to the disposal of any freehold interest in land or the grant of a leasehold interest in land where consent for such disposal or grant is required under paragraph (1).

Application of landlord and tenant law

39.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised works or the right to operate the same; and
- (b) any agreement entered into by the Company with any person for the construction, maintenance, use or operation of the authorised works, or any part of them,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

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

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

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

Obstruction of construction of authorised works

40. Any person who, without reasonable excuse—

- (a) obstructs any person acting under the authority of the Company in setting out the lines of the scheduled works or in constructing any authorised work; or
- (b) interferes with, moves or removes any apparatus belonging to any person acting under the authority of the Company,

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

Disclosure of confidential information

41. A person who—

- (a) enters a factory, workshop or workplace in pursuance of the provisions of article 18 (protective works to buildings, roads and apparatus of a statutory undertaker) or article 19 (power to survey and investigate land); and
- (b) discloses to any person any information obtained by him relating to any manufacturing process or trade secret,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale unless the disclosure is made in the course of that person's performance of a duty in connection with the purposes for which the person was authorised to enter the land.

Statutory undertakers etc.

42. The provisions of Schedule 10 (provisions relating to statutory undertakers etc.) have effect.

For the protection of specified undertakers

43. The provisions of Schedule 11 (for the protection of electricity, gas, water and sewerage undertakers) have effect.

For the protection of the Environment Agency

44. The provisions of Schedule 12 (for the protection of the Environment Agency) have effect.

For the protection of operators of electronic communications apparatus

45. The provisions of Schedule 13 (for the protection of operators of electronic communications code network) have effect.

For the protection of the City of London Corporation

46. The provisions of Schedule 14 (for the protection of the City of London Corporation) have effect.

Certification of plans etc.

47. The Company must, as soon as practicable after the making of this Order, submit copies of the book of reference, the sections, the land plan and the works plans, and the access to works and permanent stopping up of streets plan to the Secretary of State for certification that they are, respectively, true copies of the book of reference, sections and plans referred to in this Order; and a document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

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

- (a) by post; or
- (b) with the consent of the recipient and subject to paragraphs (6) to (8) by electronic transmission.

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

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978⁽⁴⁴⁾ as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

(44) 1978 c. 30.

- (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, that person's 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 the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—
- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
 - (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.
- (5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is taken to be fulfilled where the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission either in writing or by electronic transmission.
- (6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.
- (7) Any consent to the use of electronic transmission given by a person may be revoked by that person in accordance with paragraph (8).
- (8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—
- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
 - (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.
- (9) This article does not exclude the employment of any method of service not expressly provided for by it.

No double recovery

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

Arbitration

50. Any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

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

Signed by authority of the Secretary of State

22nd December 2015

Martin Woods
Head of the Transport and Works Act Orders
Unit
Department for Transport