
STATUTORY INSTRUMENTS

2022 No. 1194

The Portishead Branch Line (MetroWest Phase 1) Order 2022

PART 1

Preliminary

Citation and commencement

1. This Order may be cited as the Portishead Branch Line (MetroWest Phase 1) Order 2022 and comes into force on 5th December 2022.

Interpretation

2.—(1) In this Order—

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

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

“the 1980 Act” means the Highways Act 1980(3);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(4);

“the 1984 Act” means the Road Traffic Regulation Act 1984(5);

“the 1990 Act” means the Town and Country Planning Act 1990(6);

“the 1991 Act” means the New Roads and Street Works Act 1991(7);

“the 2003 Act” means the Communications Act 2003(8);

“the 2008 Act” means the Planning Act 2008;

“the 2017 Act” means the Neighbourhood Planning Act 2017(9);

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

“authorised development” means the development described in Schedule 1 (authorised development) and any other development authorised by this Order, which is development within the meaning of section 32 (meaning of development) of the 2008 Act;

“authorised railway works” means those parts of the authorised development that are on land that is or will become operational railway land;

“Avon Gorge Woodlands SAC” means the Avon Gorge Woodlands Special Area of Conservation (EU Code UK0012734);

(1) 1961 c. 33.
(2) 1965 c. 56.
(3) 1980 c. 66.
(4) 1981 c. 66.
(5) 1984 c. 27.
(6) 1990 c. 8.
(7) 1991 c. 22.
(8) 2003 c. 21.
(9) 2017 c. 20.

“Avon Gorge Vegetation Management Plan” means the management plan for the management of the construction of the authorised development within the Avon Gorge Woodlands SAC agreed by Network Rail and the undertaker in consultation with Natural England and certified as such by the Secretary of State;

“book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

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

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

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

“COCP” means the document certified as the code of construction practice by the Secretary of State for the purposes of this Order;

“commence” means beginning to carry out any material operation (as defined in section 155 (when development begins) of the 2008 Act) forming part of the authorised development other than operations consisting of environmental surveys and monitoring, investigations for the purpose of assessing ground conditions, archaeological investigations, receipt and erection of construction plant and equipment, utility diversions, laying out of compounds, works to clear watercourses, erection of any temporary means of enclosure, erection of protective fencing, the temporary display of site notices or advertisements, and “commencement” is to be construed accordingly;

“compounds, haul roads and access to works plan” means the document certified by the Secretary of State as the compounds, haul roads and access to works plan for the purposes of this Order;

“crossings to be extinguished plans” means the plans certified as the crossings to be extinguished plans by the Secretary of State for the purposes of this Order;

“CTMP” means the document certified as the construction traffic management plan by the Secretary of State for the purposes of this Order;

“cycle track” has the same meaning as in section 329(1) (further provisions as to interpretation) of the 1980 Act⁽¹⁰⁾;

“design drawings” means the drawings described as such in Schedule 17 (documents to be certified) and certified as the design drawings by the Secretary of State for the purposes of this Order;

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means provided it is in electronic form,

and in this definition “electronic communications network” has the same meaning as in section 32(1)⁽¹¹⁾ (meaning of electronic communications and networks and services) of the 2003 Act;

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of this Order;

“first open for use” means—

- (a) in respect of railway related activities, the date on which Work Nos. 1, 1A and 1B are first used for revenue earning purposes by the passage of passenger carrying railway vehicles; and

⁽¹⁰⁾ The definition of “cycle track” was amended by section 1 of the Cycle Tracks Act 1984 (c. 38) and paragraph 21(2) of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c. 54).

⁽¹¹⁾ Section 32(1) was amended by S.I. 2011/1210.

(b) in respect of highway related activities, the date on which the new highway is first available for the public to pass and repass;

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

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

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

“IDB” means the North Somerset Levels Internal Drainage Board;

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

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

“maintain” includes, to the extent assessed in the environmental statement, inspect, repair, adjust, alter, remove, reconstruct, replace or improve in relation to the authorised development and any derivative of “maintain” is to be construed accordingly;

“Master CEMP” means the document certified as the master construction environmental management plan by the Secretary of State for the purposes of this Order;

“National Highways” means National Highways Limited, company number 9346363, and includes any successor in function authorised to operate the strategic highway network in the area in which the authorised development is located;

“Network Rail” means Network Rail Infrastructure Limited, company registration number 02904587 whose registered office is at 1 Eversholt Street, London, NW1 2DN, and includes any successor in function to Network Rail authorised to operate that part of the national rail network that the authorised development is or will be included in;

“new highways plans” means the plans certified as the new highways plans by the Secretary of State for the purpose of this Order;

“operational railway land” means—

- (a) land required permanently for the construction and operation of Work Nos. 1, 1A and 1B;
- (b) any part of the existing railway corridor owned by Network Rail between Ashton Junction and Portbury Junction; and
- (c) land forming permanent maintenance compounds held by Network Rail for the maintenance of the railways referred to in sub-paragraphs (a) and (b),

and includes associated works, structures, embankments, cuttings, stations, bridges and culverts;

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

“Order limits” means the Order limits shown on the works plans;

“owner” in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(12);

“permanent and temporary stopping up and diversion plan” means the plan certified as the permanent and temporary stopping up and diversion plan by the Secretary of State for the purposes of this Order;

“permanent traffic regulation order plans” means the documents certified as the permanent traffic regulation order plans by the Secretary of State for the purposes of this Order;

(12) 1981 c. 67. The definition of “owner” was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). There are other amendments to the 1981 Act which are not relevant to this Order.

“Portishead Railway Acts” means the Bristol and Portishead Pier and Railway Act 1863⁽¹³⁾ and the Bristol and Portishead Pier and Railway Act 1866⁽¹⁴⁾;

“private means of access” means a private access to the highway network from neighbouring land;

“relevant highway authority” means North Somerset District Council for highways within the administrative area of North Somerset District Council and Bristol City Council for highways within the administrative area of Bristol City Council or any successor highway authority to those authorities;

“relevant lead local flood authority” means North Somerset District Council for land within the administrative area of North Somerset District Council and Bristol City Council for land within the administrative area of Bristol City Council as lead local flood authority and any successor flood authority to these authorities;

“relevant planning authority” for land within the administrative area of North Somerset District Council means North Somerset District Council or for land within the administrative area of Bristol City Council means Bristol City Council or any successor planning authority to those authorities;

“section drawings” means the drawings certified as the section drawings by the Secretary of State for the purposes of this Order;

“statutory undertaker” has the same meaning as in section 127(8) (statutory undertakers’ land) of the 2008 Act;

“street” means a street within the meaning of section 48 (streets, street works and undertakers) of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority” in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“traffic authority” has the same meaning as in section 121A⁽¹⁵⁾ (traffic authorities) of the 1984 Act;

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

“undertaker” means—

- (a) North Somerset District Council; and
- (b) subject to articles 9 (benefit of Order), 10 (consent to transfer benefit of Order) and 11 (agreements with Network Rail) any other person who has the benefit of this Order in accordance with section 156 (benefit of order granting development consent) of the 2008 Act for such time as that section applies to that person;

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

“the works plans” means the plans certified as the works plans by the Secretary of State 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) References in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or which is an interest otherwise comprised in the Order land.

⁽¹³⁾ 26 & 27 Vict. c. cvii.

⁽¹⁴⁾ 29 & 30 Vict. c. lxxxviii.

⁽¹⁵⁾ Section 121A was inserted by section 168(1) of, and paragraph 70 of Schedule 8 to, the 1991 Act.

(4) All distances, directions, lengths and areas referred to in this Order are approximate and distances between points on a work comprised in the authorised development are taken to be measured along that work.

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

(6) References in this Order to numbered works are references to the works as numbered in Schedule 1 (authorised development).

Incorporation of the Railway Clauses Acts

3.—(1) The following provisions of the Railways Clauses Consolidation Act 1845(**16**) are incorporated in this Order—

- (a) section 46 (crossing of roads – level crossings), subject to paragraph (4);
- (b) section 58 (company to repair roads used by them), except for the words from “and if any question” to the end;
- (c) section 61 (company to make sufficient approaches and fences to highways crossing on the level);
- (d) section 68 (accommodation works by company);
- (e) 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”;
- (f) sections 72 and 73 (supplementary provisions relating to accommodation works);
- (g) section 77 (presumption that minerals excepted from acquisition of land);
- (h) sections 78 to 83, 85 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(**17**); and
- (i) section 105 (carriage of dangerous goods on railway), except for the words from “and if any person” to “for every such offence”.

(2) The following provisions of the Railways Clauses Act 1863(**18**) are incorporated in this Order—

- (a) sections 5 and 7 (level crossings); and
- (b) section 12 (signals, watchmen etc.).

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

“the company” means the undertaker and, for land that is within that part of the Order limits which is either existing operational railway or which will become operational railway, Network Rail;

“goods” includes anything 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;

(16) 1845 c. 20. Section 46 was amended by section 109(1) and (3) of, and paragraph 22 of Schedule 8, and Schedule 10 to, the Courts Act 2003 (c. 39). Section 58 was amended by section 46 of, and Part 3 of Schedule 7 to, the Justices of the Peace Act 1949 (c. 101). Section 78 was amended by section 39(3) of, and Schedule 7 to, the Compulsory Purchase Act 1965 (c. 56) and S.I. 2009/1307. Section 105 was amended by section 46 of, and Part 3 of Schedule 7 to, the Justices of the Peace Act 1949, section 31(6) of the Criminal Law Act 1977 (c. 45) and sections 37 and 49 of the Criminal Justice Act 1982 (c. 48).

(17) 1923 c. 20. Section 15 was amended by section 10(1) of the Decimal Currency Act 1969 (c. 19).

(18) 1863 c. 92.

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

“the special Act” means this Order.

(4) In section 46 of the Railways Clauses Consolidation Act 1845, as incorporated in this Order, for the proviso there is substituted “provided always that, with the consent of the relevant 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

Principal powers

Application and modification of legislation

4.—(1) The provisions of Chapter 1 of Part 2 of the 2017 Act do not apply as regards the temporary possession or use of land under articles 33 (temporary use of land for carrying out the authorised development) and 34 (temporary use of land for maintaining the authorised development) of this Order or to anything else done under this Order.

(2) Despite the provisions of section 208 (liability) of the 2008 Act, for the purposes of regulation 6 of the Community Infrastructure Levy Regulations 2010⁽¹⁹⁾ any building comprised in the authorised development is deemed to be—

- (a) a building into which people do not normally go; or
- (b) a building into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery.

Development consent etc. granted by the Order

5. Subject to the provisions of this Order, including the requirements in Schedule 2 (requirements), the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

Planning permission

6.—(1) If planning permission is granted under the powers conferred by the 1990 Act for development any part of which is within the Order limits following the coming into force of this Order that is—

- (a) not itself a nationally significant infrastructure project under the 2008 Act or part of such a project; or
- (b) required to complete or enable the use or operation of any part of the development authorised by this Order,

then the carrying out, use or operation of such development under the terms of the planning permission does not constitute a breach of the terms of this Order.

(2) The provisions of this Order do not preclude or apply to any development, or any part of a development, which is carried out by, or used by, Network Rail on any land (whether or not within the Order limits)—

- (a) that is or will become operational railway land and is carried out in accordance with any planning permission granted under the 1990 Act including a planning permission granted

⁽¹⁹⁾ S.I. 2010/948.

under article 3 and Class A of Part 8 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015(20); or

- (b) that is carried out in accordance with any planning permission granted under the 1990 Act including a planning permission granted under article 3 and Class A of Part 18 of Schedule 2 to that Order.

Limits of deviation

7.—(1) In constructing or maintaining Work Nos. 1, 1A, 1B and 1C the undertaker may deviate—

- (a) laterally from the lines or situations shown on the works plans to the extent of the limits of deviation so shown for the work; and
- (b) vertically from the levels shown on the section drawings—
- (i) to any extent upwards not exceeding 0.5 metres; and
- (ii) to any extent downwards not exceeding 0.5 metres.

(2) In constructing or maintaining any other work comprised in the authorised development the undertaker must construct any such work within the extents of work shown on the works plans for the relevant work.

Maintenance of authorised development

8.—(1) The undertaker may at any time maintain the authorised development, except to the extent that this Order or an agreement made under this Order provides otherwise.

(2) Paragraph (1) does not authorise any works which are likely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

Benefit of Order

9. Subject to article 10 (consent to transfer benefit of Order) and article 11 (agreements with Network Rail) the provisions of this Order conferring powers on the undertaker have effect solely for the benefit of the undertaker.

Consent to transfer benefit of Order

10.—(1) The undertaker may—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) The consent of the Secretary of State and the consent of Network Rail are required for a transfer or grant under this article unless such transfer or grant is to Network Rail in accordance with an agreement made under article 11.

Agreements with Network Rail

11.—(1) The undertaker and Network Rail may enter into and carry into effect agreements with respect to the construction, maintenance, use and operation of—

- (a) the authorised development or any part of the authorised development; and
- (b) any works required for the purposes of or in connection with the authorised development, by Network Rail or by the undertaker, or by the undertaker and Network Rail jointly.

(2) Any agreement made pursuant to the powers conferred by this article may contain such incidental, consequential or supplementary provisions as may be agreed, including (but without limitation on the scope of paragraph (1)), provisions—

- (a) with respect to the defraying of, or the making of contributions towards, the cost of such construction, maintenance, use and operation as are referred to in paragraph (1) by the undertaker or by Network Rail or by the undertaker and Network Rail jointly;
- (b) for the exercise by Network Rail, or by the undertaker, or by Network Rail and the undertaker jointly, of all or any of the powers and rights of Network Rail and the undertaker (as the case may be) in respect of any of the authorised development and any works required for the purposes of, or in connection with, those works; and
- (c) without limitation on the scope of sub-paragraph (b), for the exercise by Network Rail, or by Network Rail and the undertaker jointly, of all or any of the powers under this Order for, or relating to, the compulsory acquisition or the taking of temporary possession of any land or rights over land.

(3) The exercise by the undertaker or Network Rail or by the undertaker and Network Rail jointly, of any powers and rights under any enactment or contract pursuant to any such agreement as is authorised by paragraph (1) is subject to all statutory and contractual provisions relating to it as would apply if such powers and rights were exercised by the undertaker or Network Rail (as the case may be) alone, and accordingly such provisions, with any necessary modifications, apply to the exercise of such powers and rights by the undertaker or Network Rail or by the undertaker and Network Rail jointly, as the case may be.

(4) The undertaker and Network Rail may enter into, and carry into effect, agreements for the transfer to and vesting in Network Rail or the undertaker, or the undertaker and Network Rail jointly of—

- (a) any of the authorised development or any part of that development; or
- (b) any works, lands or other property required for the purposes of the authorised development or in connection with such development,

together with any rights and obligations (whether or not statutory) of Network Rail or the undertaker relating to them.

PART 3

Streets, Highways and Level Crossings

Application of the 1991 Act

12.—(1) Works carried out 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—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) (which defines what highway authority works are major highway works) of that Act; 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(21) (dual carriageways and roundabouts) of the 1980 Act.

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

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

- (a) section 56(22) (power to give directions as to timing of street works);
- (b) section 56A(23) (power to give directions as to placing of apparatus);
- (c) section 58(24) (restriction on works following substantial road works);
- (d) section 58A(25) (restriction on works following substantial street works); and
- (e) section 73A (power to require undertaker to re-surface street);
- (f) section 73B (power to specify timing etc. of re-surfacing);
- (g) section 73C (materials, workmanship and standard of re-surfacing);
- (h) section 78A (contributions to costs of re-surfacing by undertaker); and
- (i) Schedule 3A(26) (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 carrying out 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 the carrying out of works under article 13 (street works and power to alter the layout etc. of streets) or any stopping up, alteration or diversion of a street under article 15 (temporary stopping up of streets and public rights of way) whether or not the carrying out of such works constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act(27) referred to in paragraph (4) are—

- (a) section 54(28) (advance notice of certain works), subject to paragraph (6);
- (b) section 55(29) (notice of starting date of works), subject to paragraph (6);
- (c) section 57(30) (notice of emergency works);
- (d) section 59(31) (general duty of street authority to co-ordinate works);
- (e) section 60 (general duty of undertakers to co-operate);
- (f) section 68 (facilities to be afforded to street authority);
- (g) section 69 (works likely to affect other apparatus in the street);

(21) Section 64 was amended by Schedule 17 to the Local Government Act 1985 (c. 51) and Schedule 9 to the 1991 Act.

(22) Section 56 was amended by sections 40 and 43 of the Traffic Management Act 2004 (c. 18).

(23) Section 56A was inserted by section 44 of the Traffic Management Act 2004.

(24) Sections 58 was amended by section 51 of the Traffic Management Act 2004.

(25) Section 58A was inserted by section 52(1) of the Traffic Management Act 2004.

(26) Schedule 3A was inserted by section 52 of, and Schedule 4 to, the Traffic Management Act 2004.

(27) 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.

(28) Section 54 was amended by section 49(1) of the Traffic Management Act 2004.

(29) Section 55 was amended by sections 49(2) and 51(9) of the Traffic Management Act 2004.

(30) Section 57 was amended by section 52(3) of the Traffic Management Act 2004.

(31) Section 59 was amended by section 42 of the Traffic Management Act 2004.

- (h) section 76 (liability for cost of temporary traffic regulation); and
- (i) 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.

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) have effect as if references in section 57 of that Act to emergency works included a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

Street works and power to alter the layout etc. of streets

13.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 3 (streets subject to street works) as are within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel within or under it;
- (b) tunnel or bore under the street or carry out any works to strengthen or repair the carriageway;
- (c) remove or use all earth and material in or under the street;
- (d) place and keep apparatus under the street;
- (e) maintain, alter or renew apparatus in the street or change its position;
- (f) demolish, remove, replace and relocate any street furniture within the street;
- (g) execute any works to improve sight lines;
- (h) execute and maintain any works to provide hard and soft landscaping;
- (i) carry out re-lining and placement of road markings;
- (j) remove and install temporary and permanent signage;
- (k) make and maintain crossovers and passing places;
- (l) execute any works of surfacing or re-surfacing of the highway; and
- (m) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (l).

(2) Without limitation on the scope of the specific powers conferred by paragraph (1) but subject to paragraph (4), the undertaker may, for the purposes of constructing and maintaining any part of the authorised development, alter the layout of any street within the Order limits and the layout of any street having a junction with such a street; and, without limitation on the scope of that power, the undertaker may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, splitter island, footpath, footway, cycle track or verge within the street;
- (b) alter the level or increase the width of any such kerb, splitter island, footpath, footway, cycle track or verge; and
- (c) reduce the width of the carriageway of the street.

(3) The undertaker must restore to the reasonable satisfaction of the street authority any street which has been temporarily altered under this article.

(4) The powers conferred by paragraph (2) are not to be exercised without the consent of the street authority, but such consent must not be unreasonably withheld.

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

Permanent stopping up of streets

14.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development—

- (a) stop up the street specified in columns (1) and (2) of Part 1 of Schedule 4 (streets to be stopped up) to the extent specified in column (3) of that part of that Schedule; and
- (b) stop up the streets specified in columns (1) and (2) of Part 2 of Schedule 4 to the extent specified in column (3) of that part of that Schedule.

(2) The street specified in columns (1) and (2) of Part 1 of Schedule 4 is not to be wholly or partly stopped up under this article unless—

- (a) the new street to be constructed and substituted for it, which is specified in column (4) of that Part of that Schedule, has been constructed and completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).

(3) 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 undertaker may appropriate and use for the purposes of the authorised development so much of the site of the street as is bounded on both sides by land owned by the undertaker.

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

(5) This article is subject to article 42 (apparatus and rights of statutory undertakers in stopped up streets).

Temporary stopping up of streets and public rights of way

15.—(1) Subject to paragraph (4) the undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter or divert any street or public right of way or any part of a street or public right of way within the Order limits and may for any reasonable time—

- (a) divert the traffic from the street or public right of way; and
- (b) subject to paragraph (3), prevent all persons from passing along the street or public right of way.

(2) Without limitation on the scope of paragraph (1) the undertaker may use any street or public right of way temporarily stopped up and lying within the Order limits as a temporary working site under the powers conferred by this article.

(3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street or public right of way affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(4) The street specified in columns (1) and (2) of Part 1 of Schedule 5 (streets to be stopped up temporarily) is not to be wholly or partly stopped up under this article to the extent specified, by reference to the letters and numbers shown on the permanent and temporary stopping up and diversion plan, in column (3) of that Schedule, unless the temporary alternative route to be constructed and substituted for it, which is specified in column (4) of that Part of that Schedule,

has been constructed and completed to the reasonable satisfaction of the street authority and is open for use.

(5) Without limitation on the scope of paragraph (1), the undertaker may temporarily stop up the public rights of way described in Part 2 of Schedule 5 to the extent specified in column (3) of that part of that Schedule.

(6) The undertaker may not temporarily stop up, alter, divert or use as a temporary working site—

- (a) any street or public right of way specified as mentioned in Schedule 3 (streets subject to street works) or paragraphs (4) or (5) without first consulting the street authority; and
- (b) any other street or public right of way without the consent of the street authority which may attach reasonable conditions to any consent.

(7) Any person who suffers loss by the suspension of any private right of way or private means of access under this article is entitled to compensation to be determined, in case of dispute, as if it were a dispute under Part 1 of the 1961 Act.

Bridleways, cycle tracks and footpaths

16.—(1) The public right of way specified in columns (1) and (2) of Part 1 of Schedule 6 (bridleways, cycle tracks and footpaths) and all private rights of way (if any) over that route are stopped up to the extent specified in column (3) of that Part of that Schedule.

(2) With effect from the date of the coming into force of this Order the section of footpath specified in column (4) of Part 1 of Schedule 6 is created.

(3) Unless otherwise agreed with the relevant planning authorities, the new public rights of way set out in Part 2 of Schedule 6 and identified on the new highways plans are to be constructed by the undertaker in the specified locations and open for use from the date that part of the authorised development consisting of the new railway is first open for use.

Access to works

17. The undertaker may, for the purposes of the authorised development—

- (a) form and lay out means of access, or improve existing means of access, in the locations specified in columns (1) and (2) of Schedule 7 (access to works) and shown on the compounds, haul roads and access to works plan; and
- (b) with the approval of the relevant planning authority after consultation with the relevant highway authority, form and lay out such other means of access, or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

Agreements with street authorities

18.—(1) A street authority and the undertaker 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 authorised by the Order;
- (b) the strengthening, improvement, repair or reconstruction of any street under the powers of this Order;
- (c) the maintenance of the structure of any bridge or tunnel carrying a street over or under any authorised railway;
- (d) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or

- (e) the carrying out in the street of any of the works referred to in article 13(1) (street works and power to alter the layout etc. of streets);
- (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;
 - (b) include an agreement between the undertaker and the street authority specifying a reasonable time for the completion of the works; and
 - (c) contain such terms as to payment and otherwise as the parties consider appropriate.

Construction and maintenance of new or altered streets

19.—(1) Any street to be constructed under this Order must be completed to the reasonable satisfaction of the street authority and unless otherwise agreed with the street authority, must be maintained by and at the expense of the undertaker for a period of 12 months from its completion and from the expiry of that period by and at the expense of the street authority.

(2) Where a street is altered or diverted under this Order, the altered or diverted part of the street must, when completed to the reasonable satisfaction of the street authority, unless otherwise agreed with the street authority, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and from the expiry of that period by and at the expense of the street authority.

(3) The date of completion of any works referred to in paragraphs (1) and (2) is to be agreed between the undertaker and the street authority, acting reasonably.

Closure of level crossings and crossings over disused railway

20.—(1) Subject to paragraph (3), the crossing specified in columns (1) and (2) of Part 1 of Schedule 8 (closure of crossings) is to be permanently stopped up and discontinued.

(2) Subject to paragraph (3), upon the stopping up and discontinuance of any crossing referred to in paragraph (1), all public or private rights of way (if any) over the part of the crossing specified in relation to it in column (3) of Part 1 of Schedule 8 are extinguished.

(3) Paragraphs (1) and (2) are not to take effect with respect to the permanent stopping up and discontinuance of the crossing specified in columns (1), (2) and (3) of Part 1 of Schedule 8 until the replacement specified in relation to it in column (4) of that Part of that Schedule has been constructed and completed to the reasonable satisfaction of the street authority and is open for use.

(4) The crossings specified in columns (1) and (2) of Part 2 of Schedule 8 are permanently stopped up and discontinued to the extent specified in column (3) of that Part of that Schedule.

(5) Upon the permanent closure of each of the crossings referred to in paragraph (4), all public or private rights of way (if any) over the part of the crossings specified in relation to it in column (3) of Part 2 of Schedule 8 are extinguished.

(6) 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, as if it were a dispute under Part 1 of the 1961 Act.

(7) In this article and in Schedule 8 “crossing” includes a level crossing, a former level crossing and a permissive crossing of the railway or disused railway.

Accommodation and occupation crossings

21.—(1) Subject to paragraph (2) and regardless of anything in section 68 (accommodation works by Company) of the Railways Clauses Consolidation Act 1845 as incorporated in the Portishead

Railway Acts or any other enactment or instrument, all public or private rights of way (if any) afforded by means of the accommodation or occupation facilities specified in columns (1) and (2) of Parts 1 and 2 of Schedule 9 (accommodation and occupation crossings), including those specified in column (3) of Parts 1 and 2 of that Schedule, are extinguished.

(2) Paragraph (1) does not take effect with respect to the extinguishment of the public or private rights of way (if any) by means of a facility specified in columns (1) and (2) of Part 1 of Schedule 9 until the works specified in relation to it in column (4) of Part 1 of that Schedule have been provided.

(3) Paragraph (1) takes effect with respect to the extinguishment of the public or private rights of way (if any) specified in column (3) of Part 2 of Schedule 9 on the date this order comes into force.

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

PART 4

Supplemental powers

Discharge of water

22.—(1) Subject to paragraphs (3) to (6) the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out, operation or maintenance of the authorised development 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 making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) must be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991⁽³²⁾.

(3) The undertaker 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 undertaker 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) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The undertaker 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 2016⁽³³⁾.

(8) In this article—

⁽³²⁾ 1991 c. 56. Section 106 was amended by section 35(1) and (8) and section 43(2) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43), sections 36(2) and 99 of the Water Act 2003 (c. 37) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2016 (c. 29).

⁽³³⁾ S.I. 2016/1154.

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991⁽³⁴⁾ have the same meaning as in that Act.

Authority to survey and investigate land

23.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

- (a) survey or investigate the land;
- (b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit 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; and
- (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.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1), unless at least 14 days’ notice has been served on every owner and occupier of the land.

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

- (a) must, if so required, before or after entering the land produce written evidence of their 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.

(4) No trial holes may be made under this article—

- (a) in land located within the highway boundary without the consent of the relevant highway authority; or
- (b) in a private street without the consent of the street authority.

(5) The undertaker 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, as if it were a dispute under Part 1 of the 1961 Act.

PART 5

Powers of acquisition

Compulsory acquisition of land

24.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate, or is incidental to, it.

(2) This article is subject to paragraph (3) of article 27 (compulsory acquisition of rights or imposition of covenants), article 31 (acquisition of subsoil or airspace only) and paragraph (8) of article 33 (temporary use of land for carrying out the authorised development).

⁽³⁴⁾ 1991 c. 57.

Modification of Part 1 of the 1965 Act

25.—(1) Part 1 of the 1965 Act, as applied to this Order by section 125(**35**) (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1)(**36**) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 26 (time limit for exercise of authority to acquire land compulsorily or take land temporarily) of the Portishead Branch Line (MetroWest Phase 1) Order 2022”.

(3) In section 11A(**37**) (powers of entry: further notices of entry)—

- (a) in subsection (1)(a), after “land” insert “under that provision”;
- (b) in subsection (2), after “land” insert “under that provision”.

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 26 of the Portishead Branch Line (MetroWest Phase 1) Order 2022”.

(5) In Schedule 2A(**38**) (counter-notice requiring purchase of land not in notice to treat)—

(a) for paragraphs 1(2) and 14(2) substitute—

“(2) But see article 31(3) (acquisition of subsoil or airspace only) of the Portishead Branch Line (MetroWest Phase 1) Order 2022, which excludes the acquisition of subsoil or airspace only from this Schedule”;

(b) after paragraph 29, insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 33 (temporary use of land for carrying out the authorised development) or 34 (temporary use of land for maintaining the authorised development) of the Portishead Branch Line (MetroWest Phase 1) Order 2022.”.

Time limit for exercise of authority to acquire land compulsorily or take land temporarily

26.—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

- (a) no notice to treat may be served under Part 1 of the 1965 Act; and
- (b) no declaration may be executed under section 4 (execution of declaration) of the 1981 Act(**39**) as applied by article 30 (application of the 1981 Act).

(2) The authority conferred by article 33 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

(35) Section 125 was amended by Schedule 16 to the Housing and Planning Act 2016 (c. 22).

(36) Section 4A(1) was inserted by section 202(1) of the Housing and Planning Act 2016.

(37) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.

(38) Schedule 2A was inserted by paragraphs 1 and 3 of Schedule 17 to the Housing and Planning Act 2016.

(39) Section 4 was amended by sections 184, 185 and 199(2) of, and paragraphs 1 and 2 of Part 1 of Schedule 13 to, the Housing and Planning Act 2016.

Compulsory acquisition of rights or imposition of covenants

27.—(1) Subject to paragraphs (3) and (4), the undertaker may acquire compulsorily such rights over the Order land as may be required for any purpose for which that land may be acquired under article 24 (compulsory acquisition of land) by creating them as well as by acquiring rights already in existence.

(2) The undertaker may impose restrictive covenants affecting any part of the Order land which—

- (a) adjoins or will, on completion of the authorised railway works, adjoin Work Nos. 1, 1A, 1B or 1C or as may be required for the purpose of protecting the authorised railway works; or
- (b) is required for the purposes of ecological or other mitigation.

(3) In the case of the Order land specified in column (1) of Schedule 10 (land in which only new rights, etc., may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such new rights in the land for the purpose specified in relation to that land in column (2) of that Schedule or the imposition of restrictive covenants in accordance with paragraph (2).

(4) Subject to Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as substituted by paragraph 5(8) of Schedule 11 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants)) where the undertaker acquires a right over land or the benefit of a restrictive covenant, the undertaker is not required to acquire a greater interest in that land.

(5) Schedule 11 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 or the imposition of a restrictive covenant.

(6) In any case where the acquisition of new rights under paragraph (1) or the imposition of a restriction under paragraph (2) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, then the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights or impose such restrictions to the relevant statutory undertaker.

(7) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (6) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

(8) Where any power is transferred to a statutory undertaker in accordance with a transfer under paragraph (6) and the statutory undertaker—

- (a) is liable to pay compensation for the exercise of that power; and
- (b) fails to discharge that liability,

the liability is enforceable against the undertaker.

Private rights over land subject to compulsory acquisition or temporary possession

28.—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order are extinguished—

- (a) from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry onto the land by the undertaker under section 11(1)(40) (powers of entry) of the 1965 Act,

(40) Section 11(1) was amended by Schedule 4 to the Acquisition of Land Act 1981 (c. 67) and section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1) and section 186(1) and (2) of the Housing and Planning Act 2016 (c. 22),

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right or the burden of the restrictive covenant—

(a) from the date of the acquisition of the right or the benefit of the restrictive covenant by the undertaker, whether compulsorily or by agreement; or

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

(3) Subject to the provisions of this article, all private rights over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

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

(5) This article does not apply in relation to any right to which section 138(41) (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 37 (statutory undertakers and electronic communications code network operators) applies.

(6) Paragraphs (1) to (3) have effect subject to—

(a) any notice given by the undertaker before—

(i) the completion of the acquisition of the land or the acquisition of the rights or the imposition of restrictive covenants over or affecting the land;

(ii) the undertaker's appropriation of it;

(iii) the undertaker's entry onto it; or

(iv) the undertaker's taking temporary possession of it,

that any or all of those paragraphs do not apply to any right specified in the notice; and

(b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(7) If any such agreement as is referred to in paragraph (6)(b)—

(a) is made with a person in or to whom the right is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(8) References in this article to private rights over land include any right of way, trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Power to override easements and other rights

29.—(1) Any authorised activity which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title from the undertaker or

(41) Section 138 was amended by section 23(4) of the Growth and Infrastructure Act 2013 (c. 27) and S.I. 2017/1285.

by any contractors, servants or agents of the undertaker) is authorised by this Order if it is done in accordance with the terms of this Order, notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to the use of the land arising by virtue of a contract.

(2) Any authorised activity which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or Network Rail or by any person authorised by them) is authorised by this Order if it is done in accordance with the terms of this Order, notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to the use of the land arising by virtue of a contract.

(3) The interests and rights to which this article applies include any right of way, trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and includes restrictions as to the use of land arising by virtue of a contract.

(4) Where an interest, right or restriction is overridden by paragraphs (1) or (2) compensation—

- (a) is payable under section 10(42) (further provision as to compensation for injurious affection) of the 1965 Act as applied by section 152(43) (compensation in cases where no right to claim in nuisance) of the 2008 Act; and
- (b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—
 - (i) the compensation is to be estimated in connection with a purchase under that Act; or
 - (ii) the injury arises from the execution of works on or use of land acquired under that Act.

(5) Where a relevant person—

- (a) is liable to pay compensation by virtue of paragraph (4); and
- (b) fails to discharge that liability,

the liability is enforceable against the undertaker.

(6) Nothing in this article is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraphs (1) or (2) of this article.

(7) This article does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 37 (statutory undertakers and electronic communications code network operators) applies.

(8) In this article—

“authorised activity” means—

- (a) the erection, construction or maintenance of any part of the authorised development;
- (b) the exercise of any power authorised by this Order; or
- (c) the use of any Order land (including the temporary use of land) for the purposes of the authorised development; and

“relevant person” means—

- (a) a person deriving title under the undertaker;
- (b) Network Rail; or

(42) Section 10 was amended by [S.I. 2009/1307](#).

(43) Section 152 was amended by [S.I. 2009/1307](#).

- (c) a person deriving title under Network Rail.

Application of the 1981 Act

30.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.

(3) In section 5(2)(**44**) (earliest date for execution of declaration) omit the words from “, and this subsection” to the end.

(4) Omit section 5A(**45**) (time limit for general vesting declaration).

(5) In section 5B(1)(**46**) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 26 (time limit for exercise of authority to acquire land compulsorily or take land temporarily) of the Portishead Branch Line (MetroWest Phase 1) Order 2022”.

(6) In section 6(1)(b)(**47**) (notices after execution of declaration) for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.

(7) In section 7(1)(a)(**48**) (constructive notice to treat) omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(8) In Schedule A1(**49**) (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—

“(2) But see article 31(3) (acquisition of subsoil or airspace only) of the Portishead Branch Line (MetroWest Phase 1) Order 2022, which excludes the acquisition of subsoil or airspace only from this Schedule.”.

(9) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 25 (modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

Acquisition of subsoil or airspace only

31.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or the airspace over the land referred to in article 24(1) (compulsory acquisition of 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.

(2) Where the undertaker acquires any part of or rights in the subsoil of or the airspace over land under paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil or airspace only—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act as modified by article 25 (modification of Part 1 of the 1965 Act);

(44) Section 5 was amended by section 183 of, and Schedule 15 to, the Housing and Planning Act 2016 (c. 22).

(45) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016.

(46) Section 5B was inserted by section 202(2) of the Housing and Planning Act 2016.

(47) Section 6 was amended by section 183 of, and paragraphs 4 and 7 of Schedule 15 to, the Housing and Planning Act 2016 and section 4 of, and paragraph 52(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11).

(48) Section 7 was amended by section 199(2) of, and paragraphs 1 and 3 of Part 1 of Schedule 18 to, the Housing and Planning Act 2016.

(49) Schedule A1 was inserted by paragraph 6 of Part 1 of Schedule 18 to the Housing and Planning Act 2016.

(b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and

(c) section 153(4A)(50) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

(4) Paragraphs (2) and (3) are to be disregarded where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory or airspace above a house, building or manufactory.

Rights under or over streets

32.—(1) The undertaker may enter upon and appropriate so much of the subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for the purposes of the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) 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.

(4) 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 undertaker 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, as if it were a dispute under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) 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 use of land for carrying out the authorised development

33.—(1) The undertaker may, in connection with the carrying out of the authorised development but subject to article 26(1) (time limit for exercise of authority to acquire land compulsorily or take land temporarily)—

(a) enter on and take temporary possession of—

(i) the land specified in columns (1) and (2) of Schedule 12 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and

(ii) any other Order land in respect of which no notice of entry has been served under section 11(51) (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights or the imposition of covenants) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;

(b) remove any buildings and vegetation from that land;

(50) Section 153(4A) was inserted by section 200(2) of the Housing and Planning Act 2016 (c. 22).

(51) Section 11 was amended by Schedule 4 to the Acquisition of Land Act 1981 (c. 67), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1), section 186(1) and (2), section 187(1) and (2), section 188 and section 190 of, and paragraphs 2 and 3 of Schedule 16 to, the Housing and Planning Act 2016 and S.I. 2009/1307.

- (c) construct temporary works (including the provision of means of access), security fencing and buildings on that land;
 - (d) construct any works as are mentioned in Schedule 1 (authorised development);
 - (e) carry out any other mitigation, ground or rock stability, catch fencing, geotechnical or strengthening works on that land; or
 - (f) provide any temporary car parking or storage facilities on that land.
- (2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land and explain the purpose for which entry is taken in respect of land specified under paragraph (1)(a)(i).
- (3) The undertaker must not, without the agreement of the owners of the land, remain in possession of any land under this article—
- (a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 12; or
 - (b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.
- (4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but is not required to—
- (a) replace a building removed under this article;
 - (b) restore the land on which any permanent works have been constructed under paragraph (1)(d);
 - (c) remove statutory undertakers' apparatus or connections to such apparatus or any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development; or
 - (d) remove any mitigation, ground or rock stability, catch fencing, geotechnical or strengthening works which have been placed on the land to
 - (i) facilitate construction of the authorised development;
 - (ii) protect any existing operational railway; or
 - (iii) mitigate the effects of the authorised development.
- (5) The undertaker 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 provisions of 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 as if it were a dispute under Part 1 of the 1961 Act.
- (7) Without affecting article 41 (no double recovery), nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).
- (8) The undertaker must not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not precluded from acquiring any part of the subsoil

of or airspace over (or rights in the subsoil or of airspace over) that land under article 31 (acquisition of subsoil or airspace only).

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

(10) Section 13(52) (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

Temporary use of land for maintaining the authorised development

34.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any of the authorised development, the undertaker may—

- (a) enter upon and take temporary possession of any Order land if such possession is reasonably required for the purpose of maintaining the authorised development; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

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

(3) Unless paragraph (4) applies, the undertaker must serve notice of the intended entry on the owners and occupiers of the land not less than 28 days before entering upon and taking temporary possession of land under this article and that notice must state the purpose for which the undertaker intends to take possession of the land including the particulars of the part of the authorised development for which possession is to be taken.

(4) The undertaker is not required to serve notice under paragraph (3) where the undertaker has identified a potential risk to the safety of one or more of—

- (a) the authorised development or any of its parts;
- (b) the public; or
- (c) the surrounding environment,

and in such circumstances, the undertaker may enter the land under paragraph (1) subject to giving such notice (if any) as is reasonably practicable in the circumstances.

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

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

(7) The undertaker 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.

(8) Any dispute as to a person's entitlement to compensation under paragraph (7), or as to the amount of the compensation, must be determined as if it were a dispute under Part 1 of the 1961 Act.

(52) Section 13 was amended by sections 62(3) and 139(4) to (9) and section 62(3) of, paragraphs 27 and 28(1) and (3) of Schedule 13 to, and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(9) Without affecting article 41 (no double recovery), nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 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 (7).

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

(11) Section 13 (refusal to give possession to the acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(12) In this article “maintenance period”, in relation to any part of the authorised development, means the period of 5 years beginning with the date on which that part of the authorised development is first open for use.

Disregard of certain interests and improvements

35.—(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

36.—(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 development.

(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), or the imposition of restrictive covenants, under article 27 (compulsory acquisition of rights or imposition of covenants), the tribunal must set off against the value of the rights so acquired or restrictive covenants so imposed—

- (a) any increase in value of the land over which the new rights are acquired or restrictive covenants are imposed; and
- (b) any increase in the 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 development.

(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.

Statutory undertakers and electronic communications code network operators

- 37.**—(1) Subject to Schedule 16 (protective provisions) and paragraph (2), the undertaker may—
- (a) exercise the powers conferred by articles 24 (compulsory acquisition of land) and 27 (compulsory acquisition of rights or imposition of covenants) in relation to so much of the Order land as belongs to statutory undertakers; and
 - (b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers over or within the Order land.
- (2) Paragraph (1)(b) has no effect in relation to apparatus in respect of which the following provisions apply—
- (a) Part 3 (street works in England and Wales) of the 1991 Act; or
 - (b) article 42 (apparatus and rights of statutory undertakers in stopped up streets).

Recovery of costs of new connections

38.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 37 (statutory undertakers and electronic communications code network operators) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 37, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewage disposal plant.

(3) In this article—

“public communications provider” has the same meaning as in section 151(1) (interpretation of chapter 1) of the 2003 Act; and

“public utility undertaker” has the same meaning as in the 1980 Act.

PART 6

Operations

Operation and use of railways

39.—(1) Network Rail may operate and use the railway authorised by this Order as a system, or part of a system, of transport for the carriage of passengers and goods.

(2) Nothing in this Order, or in any enactment incorporated with or applied by this Order, affects the operation of Part 1 (the provision of railway services) of the Railways Act 1993(53).

Operational land for purposes of the 1990 Act

40. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as operational land for the purposes of that Act) of the 1990 Act.

PART 7

Miscellaneous and general

No double recovery

41. 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, or under two or more or different provisions of this Order.

Apparatus and rights of statutory undertakers in stopped up streets

42.—(1) Where a street is stopped up under articles 14 (permanent stopping up of streets) or 15 (temporary stopping up of streets and public rights of way), any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is permanently stopped up under article 14 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

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

(3) Subject to the following provisions of this article, the undertaker must pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

- (a) the execution of the relocation works required in consequence of the stopping up of the street; and
- (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

(4) If in the course of the execution of relocation works under paragraph (2)—

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) is to be reduced by the amount of that excess.

(5) For the purposes of paragraph (4)—

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

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Paragraphs (3) to (6) do not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works are to be determined in accordance with section 85 (sharing of cost of necessary measures) of that Act and any regulations for the time being having effect under that section; and
- (b) the allowable costs are to be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article—

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

“statutory utility” means a statutory undertaker for the purposes of the 1990 Act or a public communications provider as defined in section 151(1) (interpretation of Chapter 1) of the 2003 Act.

Felling or lopping of trees

43.—(1) The undertaker may fell, prune, coppice, pollard, reduce in height or width or lop any tree or shrub within or overhanging land within the Order limits or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) subject to paragraph (4), from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to passengers or other persons using the authorised development.

(2) The powers in paragraph (1) may be exercised in relation to any tree or shrub which is situated within a conservation area (designated under section 69 (designation of conservation areas) of the Planning (Listed Buildings and Conservation Areas) Act 1990)(**54**).

(3) Action may not be taken under paragraph (2) unless the undertaker has given written notice to the relevant planning authority of the intended action (with sufficient particulars to identify the tree), and either—

- (a) the relevant planning authority has indicated in writing that it has no objection to the works or that they fall within an exemption in paragraph (4) or (5), or
- (b) six weeks have elapsed from the date of the notice and a tree preservation order has not been made in respect of the tree or shrub.

(54) 1990 c. 9.

(4) Paragraph (3) does not apply where consent would not be needed for the proposed action if the tree or shrub were subject to a tree preservation order.

(5) Paragraph (3) does not apply to any action which would be exempt in accordance with regulations under section 212 (power to disapply s. 211) of the 1990 Act.

(6) The duty contained in section 213(1) (enforcement of controls as respects trees in conservation areas) of the 1990 Act does not apply to the undertaker in carrying out any activity authorised by paragraphs (2) and (3).

(7) The authority given by paragraphs (2) and (3) constitutes an authorisation by an order granting development consent for the purposes of section 211(1A) of the 1990 Act.

(8) In carrying out any activity authorised by paragraph (1) or paragraphs (2) and (3), the undertaker must not unnecessarily damage any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(9) Any dispute as to a person's entitlement to compensation under this article, or as to the amount of compensation, must be determined as if it were a dispute under Part 1 of the 1961 Act.

(10) The undertaker must not exercise the powers under paragraph (2) of this article after completion of construction of the authorised development.

(11) Nothing in paragraph (1)(a) authorises works to any tree or shrub within the Avon Gorge Woodlands SAC in contravention of the Avon Gorge Vegetation Management Plan.

Hedgerows

44.—(1) The undertaker may, for the purposes of the authorised development—

- (a) subject to requirement 6 of Schedule 2 (landscaping scheme – disused railway) and paragraph (2), remove those hedgerows specified in Part 1 (hedgerows to be removed) of Schedule 13;
- (b) remove any other hedgerows within the Order limits that may be required for the purposes of carrying out the authorised development where it is demonstrated by the undertaker to the relevant planning authority, and the relevant planning authority certifies accordingly, that the removal of the hedgerow would not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.; and
- (c) remove the important hedgerow within the Order limits and specified in Part 2 (important hedgerow) of Schedule 13.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must not unnecessarily damage the hedgerow and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, must be determined as if it were a dispute under Part 1 of the 1961 Act.

(4) In this article “hedgerow” means a hedgerow to which the Hedgerows Regulations 1997⁽⁵⁵⁾ apply and “important hedgerow” means an important hedgerow for the purposes of those Regulations.

Defence to proceedings in respect of statutory nuisance

45.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990⁽⁵⁶⁾ in relation to a nuisance falling within paragraph (g) of section 79(1) (noise emitted from premises so as to be

⁽⁵⁵⁾ S.I. 1997/1160.

⁽⁵⁶⁾ 1990 c. 43. There are amendments to section 82(1) which are not relevant to this Order.

prejudicial to health or a nuisance) of that Act no order may be made, and no fine may be imposed, under section 82(2)(57) of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development 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(58); or
 - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot be reasonably 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 undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Traffic regulation

46.—(1) Subject to the provisions of this article, the undertaker may at any time for the purposes of the construction, operation or maintenance of the authorised development permanently regulate traffic as described in Schedule 14 (traffic regulation), in the manner specified in column (3) on those roads specified in column (1) and along the lengths and between the points specified, or to the extent otherwise described in column (2) of that Schedule.

(2) Without limiting the scope of the specific powers conferred by paragraph (1) but subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with construction of the authorised development, at any time prior to the opening of the authorised development for use—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road;
- (c) authorise the use as a parking place of any road;
- (d) make provision as to the direction or priority of vehicular traffic on any road; and
- (e) 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 undertaker.

(3) The undertaker must not exercise the powers in paragraph (1) unless it has—

- (a) given not less than 12 weeks' notice in writing of its intention to do so to the chief officer of police and to the traffic authority in whose area the road is situated; and

(57) Section 82(2) was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c. 40) and section 107 of and paragraph 6(b) of Schedule 17 to, the Environment Act 1995 (c. 43).

(58) 1974 c. 40. Section 61(2) was amended by section 133(2) of, and Schedule 7 to, the Building Act 1984 (c. 55). Section 61(9) was amended by Schedule 24 to the Environment Act 1995 (c. 25) and section 162 of, and paragraph 15 of Schedule 15 to, the Environmental Protection Act 1990 (c. 43). There are other amendments to section 61 which are not relevant to this Order.

- (b) advertised its intention in such manner as the traffic authority may specify in writing within 7 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a).
- (4) Any prohibition, restriction or other provision made by the undertaker under paragraph (1) or (2)—
- (a) has effect as if duly made by, as the case may be—
- (i) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or
- (ii) the local authority in whose area the road is situated as an order under section 32(59) (power of local authorities to provide parking places) of the 1984 Act, and the instrument by which it is effected may specify savings and exemptions (in addition to those mentioned in Schedule 14) to which the prohibition, restriction or other provision is subject; and
- (b) is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004(60).
- (5) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraph (2) at any time.
- (6) Before exercising the powers conferred by paragraph (2) the undertaker must consult the chief officer of police and the traffic authority in whose area the road is situated.
- (7) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.

Application of the Land Compensation Act 1973

47.—(1) Any regulations made by the Secretary of State under sections 20 (soundproofing of buildings affected by public works) and 20A (power to make payments in respect of caravans and other structures affected by noise of public works) of the Land Compensation Act 1973(61) which apply to a railway provided or used in the exercise of statutory powers apply to the railway comprised in the authorised development as if that railway was provided or used in the exercise of statutory powers.

(2) Section 28 (power to pay expenses of persons moving temporarily during construction works etc.) of the Land Compensation Act 1973 has effect as if any works comprised in the authorised development were public works for the purposes of that section.

Application of landlord and tenant law

- 48.—(1) This article applies to—
- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

(59) Section 32 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(1) of, and paragraph 39 of Schedule 8 to, the 1991 Act.

(60) 2004 c. 18.

(61) 1973 c. 26. Section 20 was amended by section 146(6) and (12) of, and Schedule 13 to, the 1984 Act. Subsection (10) of section 20(10) was repealed by section 343(3) of, and Schedule 25 to, the 1980 Act and subsection (11) was repealed by section 155 of, and Schedule 25 to, the Rent Act 1977 (c. 42). Section 20A was inserted by paragraph 5 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34).

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.

Procedure in relation to further approvals, etc.

49.—(1) Where any application is made to a relevant authority, the consent, agreement, certification or approval concerned must, if given, be given in writing and is not to be unreasonably withheld or delayed.

(2) If a relevant authority which has received an application fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was received, the relevant authority is deemed to have given its consent, agreement, certification or approval, as the case may be.

(3) Any application to which this article applies must include a written statement that the provisions of paragraph (2) apply to that application.

(4) If before this Order comes into force the undertaker or any other person has taken any step in relation to an application to which this article applies, that step may be taken into account to determine whether the consent, agreement, certification or approval concerned should be granted provided that step would have been a valid step for the purpose of the application if it had been taken after this Order came into force.

(5) Where any application is made to a relevant authority and the application includes submissions relating to the discharge of an obligation under Part 3 of Schedule 16 (protective provisions) at the same time, paragraph (2) does not apply to that application.

(6) Where a consent, agreement or approval is required or requested by the undertaker from a relevant planning authority under a requirement in Schedule 2 (requirements) then the procedure set out in Part 2 of Schedule 2 for obtaining such consent, agreement or approval, and appealing against the refusal or failure to approve or refuse such consent, agreement or approval, applies.

(7) In this article—

“application” means an application or request for any consent, agreement, certification or approval required or contemplated by articles 13 (street works and power to alter the layout etc. of streets), 15 (temporary stopping up of streets and public rights of way), 17 (access to works), 19 (construction and maintenance of new or altered streets), 22 (discharge of water), 23 (authority to survey and investigate land) and 46 (traffic regulation); and

“relevant authority” means the owner of a watercourse, public sewer or drain, a local authority, a traffic authority, a highway authority or a street authority.

Service of notices

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

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (5) 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⁽⁶²⁾ 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—

- (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, the last known address of that person 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 may be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(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 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 communication 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.

(62) 1978 c. 30.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

Crown rights

51.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any licensee to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (a) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or
- (c) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.

(3) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions and is deemed to have been given in writing where it is sent electronically.

Amendment of local byelaws

52.—(1) The local byelaws specified in Schedule 15 (amendment of local legislation) are hereby excluded and do not apply insofar as they are inconsistent with a provision of, or a power conferred by, this Order.

(2) For the purpose of paragraph (1) a provision is inconsistent with the exercise of a power conferred by this Order if and insofar as (in particular)—

- (a) it would make it an offence to take action, or not to take action, in pursuance of the power;
- (b) action taken in pursuance of the power would cause the provision to apply so as to enable a person to require the taking of remedial or other action or so as to enable remedial or other action to be taken;
- (c) action taken in pursuance of a power or duty under the provision would or might interfere with the exercise of any work authorised by this Order.

(3) Where any person notifies the undertaker in writing that anything done or proposed to be done by the undertaker or by virtue of this Order would amount to a contravention of a statutory provision of local application, the undertaker must as soon as reasonably practicable, and at any rate within 14 days of receipt of the notice, respond in writing setting out—

- (a) whether the undertaker agrees that the action taken or proposed does or would contravene the provision of local application;
- (b) if the undertaker does agree, the grounds (if any) on which the undertaker believes that the provision is excluded by this article; and
- (c) the extent of that exclusion.

Protective provisions

53. Schedule 16 (protective provisions) has effect.

Special category land

54.—(1) On the exercise by the undertaker of the relevant Order power, the cycle track special category land is to vest in the undertaker and be discharged from all rights, trusts and incidents to which it was previously subject.

(2) In this article—

“the relevant Order power” means the powers exercisable over the cycle track special category land by the undertaker under article 24 (compulsory acquisition of land);

“the cycle track special category land” means the land numbered 01/213 and 01/223 in the book of reference and on the land plan and forming part of an open space which may be acquired compulsorily under this Order.

Documents to be certified

55.—(1) As soon as practicable after the making of this Order, the undertaker must submit copies of each of the plans and documents set out in Schedule 17 (documents to be certified) to the Secretary of State for certification as true copies of those plans and documents.

(2) Where any plan or document set out in Schedule 17 requires to be amended to reflect the terms of the Secretary of State’s decision to make the Order, that plan or document in the form amended to the Secretary of State’s satisfaction is the version of the plan or document required to be certified under paragraph (1).

(3) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

(4) The undertaker must, following certification of the plans and documents in accordance with paragraph (1), make those plans and documents available in electronic form for inspection by members of the public.

Arbitration

56. Except where otherwise expressly provided for in this Order and unless otherwise agreed in writing between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) 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 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

Natasha Kopala
Head of the Transport and Works Act Orders
Unit
Department for Transport

14th November 2022