

2015 No. 1876

TRANSPORT AND WORKS, ENGLAND

TRANSPORT, ENGLAND

The Network Rail (Tinsley Chord) Order 2015

Made - - - - 25th November 2015

Coming into force - - 16th December 2015

An application has been made to the Secretary of State in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006(a) for an Order under sections 1 and 5 of the Transport and Works Act 1992(b) (“the 1992 Act”).

The Secretary of State has determined to make an Order giving effect to the proposals comprised in the application with modifications which in the opinion of the Secretary of State do not make any substantial change in the proposals.

Notice of the Secretary of State’s determination was published in the London Gazette on 17th November 2015.

The Secretary of State, in exercise of the powers conferred by sections 1 and 5 of, and paragraphs 1 to 4, 7 to 12 and 16 of Schedule 1 to, the 1992 Act makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Network Rail (Tinsley Chord) Order 2015 and comes into force on 16th December 2015.

Interpretation

2.—(1) In this Order—

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

(a) S.I. 2006/1466, amended by S.I. 2010/439, S.I. 2011/556, S.I. 2011/2085, S.I. 2012/147, S.I. 2012/1658, S.I. 2012/2590 and S.I. 2013/755.
(b) 1992 c. 42. Section 1 was amended by the Planning Act 2008 (c. 29), Schedule 2, paragraphs 51 and 52; section 5 was amended by S.I. 2012/1659.
(c) 1961 c. 33.

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

“the 1988 Act” means the South Yorkshire Light Rail Transit Act 1988(b);

“the 1989 Act” means the South Yorkshire Light Rail Transit Act 1989(c);

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

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

“authorised tramroad” means the extension of the LRT system authorised by this Order;

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

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

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

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

“the Executive” means South Yorkshire Passenger Transport Executive;

“the limits of deviation” means the limits of deviation for the scheduled works shown on the works and land plan;

“the LRT system” means the light rail transit system comprising the railways authorised by the South Yorkshire Light Rail Transit Acts 1988 to 1993 including the railways designated as tramways by those Acts, and all works and conveniences provided in connection with any such railways, as constructed, extended or altered from time to time;

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

“Network Rail” means Network Rail Infrastructure Limited (company registration number 02904587) whose registered office is at 1 Eversholt Street, London, NW1 2DN;

“the Order limits” means any limits of deviation and any additional limits of land to be acquired or used which are shown on the works and land plan;

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

“the promoter” means the Executive and Network Rail together or either of them;

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

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

“the Sheffield to Rotherham railway” means the railway between Sheffield and Rotherham;

“tramcar” means any vehicle (whether or not used for the carriage of passengers) carried on flanged wheels along the rails of a tramway;

“tramroad” means any part of a tramway which is not laid along a street or in any other place to which the public has access;

“tramway” means a system of transport used wholly or mainly for the carriage of passengers and employing parallel rails which—

(a) provide support and guidance for vehicles carried on flanged wheels; and

(b) are laid wholly or mainly along a street or in any other place to which the public has access (including a place to which the public has access only on making a payment);

(a) 1965 c. 56.

(b) 1988 c. xxvii.

(c) 1989 c. xix.

(d) 1990 c. 8.

(e) 1981 c. 67. The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 c. 34. There are other amendments to section 7 which are not relevant to this Order.

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

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

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

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

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

Incorporation of the Railways Clauses Act in relation to the authorised tramroad

3.—(1) The following provisions of the Railways Clauses Consolidation Act 1845(**a**) are incorporated in this Order and apply to the authorised tramroad—

section 68 and 69 (accommodation works by company);

section 71 (additional accommodation works by owners);

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

section 75 (omitting to fasten gates);

section 103(**b**) (refusal to quit carriage at destination);

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

section 145(**c**) (recovery of penalties).

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

“the company” means the promoter;

“goods” includes anything conveyed on the authorised tramroad;

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

“the special Act” means this Order.

(3) The following enactments do not apply to the authorised tramroad—

the Highway (Railway Crossings) Act 1839(**d**);

in the Railway Regulation Act 1842, section 9(**e**); and

the Regulation of Railways Act 1889(**f**).

Application of the 1988 Act and repeals

4.—(1) Without affecting article 34 (application of general provisions of the 1988 Act and the 1989 Act) and subject to paragraph (2) the authorised tramroad is to be treated as part of the LRT system for the purposes of Part 2 of the 1988 Act and to the extent applicable for the purposes of, and not inconsistent with or varied by, the provisions of this Order, the provisions of Part 2 of the 1988 Act are incorporated into this Order.

(2) Section 9(5)(b) (the minimum distance between passing carriages used on the tramways) of the 1988 Act is repealed.

(a) 1845 c. 20.

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

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

(d) 1839 c. 45.

(e) 1842 c. 55.

(f) 1889 c. 57.

PART 2 WORKS PROVISIONS

Principal powers

Power to construct and maintain works

5.—(1) The promoter may construct and maintain the scheduled works.

(2) Subject to article 6 (power to deviate), the scheduled works may only be constructed in the lines or situations shown on the works and land plan and in accordance with the levels shown on the sections.

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

- (a) works to erect and construct buildings, electrical plant and machinery, apparatus and other works and conveniences as the promoter thinks fit;
- (b) works required for, or in connection with, the control of any traffic (including pedestrians) on the authorised works;
- (c) works required for the strengthening, alteration or demolition of any structure;
- (d) works to alter the position of apparatus, including mains, sewers, drains and cables;
- (e) works to alter the course of, or otherwise interfere with, a watercourse other than a navigable watercourse;
- (f) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the scheduled works;
- (g) works for the benefit or protection of premises affected by the scheduled works; and
- (h) works to construct and maintain such number of lines of rails, sidings, switches and crossings as may be necessary.

(4) Subject to paragraph (5), the promoter may carry out such other works (of whatever nature) as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works, other than works that would interfere with a navigable watercourse.

(5) Paragraphs (3) and (4) only authorise the carrying out or maintenance of works outside the limits of deviation if such works are carried out on land specified in columns (1) and (2) of Schedule 2 for the purpose specified in relation to that land in column (3) of that Schedule.

(6) The promoter may affix to any buildings for the time being constructed on any land for the purposes of the authorised tramroad—

- (a) any brackets, cables, wires, insulators and other apparatus required in connection with the construction, operation or maintenance of the authorised tramroad; and
- (b) any lamps, cameras, brackets, pipes, electric lines and other apparatus required for the provision of additional or substitute street lighting or closed circuit television in consequence of the construction, operation or maintenance of the authorised tramroad.

Power to deviate

6.—(1) In constructing or maintaining any of the scheduled works, the promoter may—

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

(2) Without limitation on the scope of paragraph (1), in constructing and maintaining the scheduled works the promoter may within the limits of deviation deviate laterally from their points of commencement and termination shown on the works and land plans.

Supplemental powers

Accommodation crossing

7.—(1) The promoter may construct the authorised tramroad so as to carry it on the level across the access track specified in Schedule 5 (accommodation crossing).

(2) The promoter may in the exercise of the powers conferred by this article alter the level of the access track specified in Schedule 5.

Discharge of water

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

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

(3) The promoter 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 promoter 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 promoter must not, in the exercise of the powers conferred by this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The promoter 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) The promoter 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 or any other polluting matter.

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

(9) In this article—

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

(a) 1991 c. 56. Section 106 was amended by sections 35(1) and (8) and 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 2010 (c. 29).

(b) S.I. 2010/675.

(c) 1991 c. 57.

Works to protect buildings, roads and apparatus of a statutory undertaker and the operation of the authorised works

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

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

lying within the Order limits as the promoter considers to be necessary or expedient.

(2) Protective works may be carried out—

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

(3) For the purpose of determining how the functions under this article are to be exercised the promoter may (subject to paragraph (5)) enter and survey any building, go onto and survey any road or access and survey any apparatus falling within paragraph (1) and any land within the curtilage of the building or in which the apparatus is located.

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

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

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building, road or apparatus;
- (b) a right under paragraph (3) to enter a building, go onto a road or access apparatus and land within the curtilage of the building or in which the apparatus is located;
- (c) a right under paragraph (4)(a) to enter a building, go onto a road or access apparatus and land within the curtilage of the building or in which the apparatus is located; or
- (d) a right under paragraph (4)(b) to enter land,

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

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land or the owner of the road or apparatus concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 43 (arbitration).

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

(8) Where—

- (a) protective works are carried out under this article to a building, road or apparatus; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised works construed in the vicinity of the building is first opened for use it appears that the

protective works are inadequate to protect the building against damage caused by the construction or operation of that part of the authorised works,

the promoter must compensate the owners and occupiers of the building, road or apparatus for any loss or damage sustained by them.

(9) Without affecting article 42 (no double recovery) nothing in this article relieves the promoter from any liability to pay compensation under section 10(2) (further provision as to compensation for injurious affection) of the 1965 Act.

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

(11) In this article—

“protective works” in relation to a building means—

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

“road” includes any structures supporting the road.

Power to survey and investigate land

10.—(1) The promoter may for the purposes of this Order—

- (a) survey or investigate any land shown within the Order limits or which may be affected by the authorised works;
- (b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions as the promoter thinks fit on the land to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limitation on the scope of paragraph (a), carry out ecological or archaeological investigations on such land;
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes; and
- (e) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (d).

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

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

- (a) must, if so required, before or after entering the land produce written evidence of his 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 are to be made under this article—

- (a) in a carriageway or without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

(5) The promoter must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be

determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) Nothing in this article obviates the need to obtain scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979(a).

(7) If either a highway authority or a street authority fails to notify the promoter of the decision within 14 days of receiving an application for consent under paragraph (4) that authority is deemed to have granted consent.

Mode of construction and operation of authorised tramroad

11.—(1) The authorised works are to be operated by electricity or, in an emergency or for the purposes of maintenance, by diesel power or other means.

(2) The authorised works are to be constructed to a nominal gauge of 1,435 millimetres.

Obstruction of construction of authorised works

12. Any person who, without reasonable excuse—

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

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

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

13.—(1) Network Rail may acquire compulsorily—

- (a) so much of the land shown on the works and land plan within the limits of deviation as land to be acquired compulsorily and described in the book of reference as may be required for the purposes of the authorised works; and
- (b) so much of the land specified in columns (1) and (2) of Schedule 2 (acquisition of certain lands for ancillary works)(being land shown on the works and land plan and described in the book of reference) as may be required for the purpose specified in relation to that land in column (3) of that Schedule,

and may use any land so acquired for those purposes or for any other purposes that are ancillary to its railway undertaking.

(2) This article is subject to article 18 (temporary use of land for construction of works).

Application of Part 1 of the 1965 Act

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

(a) 1979 c. 46.

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

(2) Part 1 of the 1965 Act, as so applied, has effect as if section 4 (which provides a time limit for compulsory purchase of land) and paragraph 3(3) of Schedule 3 (which makes provision as to the giving of bonds) were omitted.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

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

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

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

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

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

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

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

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

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

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

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

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

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 are construed as references to that Act as applied to the acquisition of land under article 13 (power to acquire land).

Power to acquire new rights

16.—(1) Network Rail may acquire compulsorily such easements or other rights over any land referred to in paragraph (1)(a) or (b) of article 13 (power to acquire land) as may be required for any purpose for which that land may be acquired under that provision, by creating them as well as by acquiring easements or other rights already in existence.

(2) Subject to section 8 (other provisions as to divided land) of the 1965 Act (as substituted by paragraph 5 of Schedule 4) (modification of compensation and compulsory purchase enactments

(a) 1981 c. 67.
(b) 1981 c. 66.

for creation of new rights)) where Network Rail acquires a right over land under paragraph (1) Network Rail is not required to acquire a greater interest in that land.

(3) Schedule 4 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.

New rights etc. only to be acquired in certain land

17.—(1) In the case of the land shown on the deposited plans and specified in column (2) of Schedule 3 (land in which only new rights etc. may be acquired) (being land shown on the deposited plans and described in the book of reference) the power conferred under article 13 (power to acquire land) may be exercised only to acquire or create compulsorily easements or other rights for the purpose specified in column (3) of that Schedule.

Temporary possession of land

Temporary use of land for construction of works

18.—(1) Network Rail may, in connection with the carrying out of the authorised works—

- (a) enter upon and take temporary possession of—
 - (i) the land specified in columns (1) and (2) of Schedule 6 (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 authorised works (or any of those works) specified in column (4) of that Schedule; and
 - (ii) any other land within the Order limits in respect of which no notice of entry has been served under section 11(a) (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the Compulsory Purchase (Vesting Declarations) Act 1981;
- (b) remove any buildings and vegetation from that land; and
- (c) construct temporary works (including the provision of means of access) and buildings on that land.

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

(3) Network Rail may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the work specified in relation to that land in column (4) of Schedule 6.

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

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

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

(a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1) and S.I. 2009/1307.

(7) Without affecting article 42 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2))(a) (further provision as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5).

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

- (a) acquiring new rights over any part of that land under article 16 (power to acquire new rights); or
- (b) acquiring new rights only in respect of certain land under article 17 (new rights etc. only to be acquired in certain lands).

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

(10) Section 13(b) (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 14(1) (application of Part 1 of the 1965 Act).

Temporary use of land for maintenance of works

19.—(1) At any time during the maintenance period relating to any of the scheduled works, Network Rail may—

- (a) enter upon and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the work or any ancillary works connected with it or securing the safe operation of any such work; 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 Network Rail 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) Not less than 28 days before entering upon and taking temporary possession of land under this article Network Rail must serve notice of the intended entry on the owners and occupiers of the land.

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

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

(6) Network Rail 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.

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

(8) Without prejudice to article 42 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

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

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

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

(10) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 14(1) (application of Part 1 of the 1965 Act).

(11) In this article, “the maintenance period”, in relation to a schedule work, means the period of 5 years beginning with the date on which the work is opened for use.

Compensation

Disregard of certain interests and improvements

20.—(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

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

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 16 (power to acquire new rights) or article 17 (new rights etc. only to be acquired in certain land), the tribunal must set-off against the value of the rights so acquired—

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

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

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

Supplementary

Acquisition of part of certain properties

22.—(1) This article applies instead of section 8(1)(a) (other provisions as to divided land) of the 1965 Act (as applied by article 14 (application of Part 1 of the 1965 Act)) in any case where—

(a) Section 8 was amended by S.I. 2009/1307.

- (a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming part only of a house, building or manufactory or part only of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on Network Rail a counter-notice objecting to the sale of the land subject to the notice to treat and stating that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner must sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner must sell only the land subject to the notice to treat is, unless Network Rail agrees to take the land subject to the counter-notice, to be referred to the tribunal.

(5) If on such a reference the tribunal determines that the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land subject to the notice to treat forms part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner must sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determines that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land subject to the notice to treat forms part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat is deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determines that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but
- (b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat is deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which Network Rail is authorised to acquire compulsorily under this Order.

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

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

the notice to treat is deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which Network Rail is authorised to acquire compulsorily under this Order.

(9) In any case where by virtue of a determination by the tribunal under this article a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, Network Rail may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and if it does so must pay the owner

compensation for any loss or expense occasioned to that person by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell part only of a house, building or manufactory or part only of land consisting of a house with a park or garden, Network Rail must pay that person compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

Extinction or suspension of private rights of way

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

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

whichever is the sooner.

(2) All private rights of way over land owned by the Executive which, being within the limits of land which may be acquired shown on the works and land plan, are required for the purposes of this Order are extinguished on the appropriation of the land for any of those purposes by Network Rail.

(3) All private rights of way over land subject to the compulsory acquisition of rights under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right—

- (a) as from the date of the acquisition of the right by Network Rail, whether compulsorily or by agreement; or
- (b) on the date of entry in the land by Network Rail under section (11)1 of the 1965 Act in pursuance of that right,

whichever is sooner.

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

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

(6) This article does not apply in relation to any right of way to which section 271 or 272 of the 1990 Act (extinguishment of rights of statutory undertakers etc.) applies.

(7) Paragraphs (1), (2), (3) and (4) have effect subject to—

- (a) any notice given by Network Rail before—
 - (i) the completion of the acquisition of;
 - (ii) Network Rail's appropriation of;
 - (iii) Network Rail's entry onto; or
 - (iv) Network Rail taking temporary possession of,the land, that any or all of those paragraphs do not apply to any right of way specified in the notice; and
- (b) any agreement made (whether before or after any of the events mentioned in subparagraph (a) and before or after the coming into force of this Order) which makes

(a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No 1) and S.I. 2009/1307.

reference to this article between Network Rail and the person in or to whom the right of way in question is vested or belongs.

(8) Any such agreement as is mentioned in sub-paragraph (7)(b) which is expressed to have effect also for the benefit of those deriving title from or under the person in or to whom the right of way in question is vested or belongs, is effective in respect of the persons so deriving title, whether the title was derived before or after the making of this agreement.

Time limit for exercise of powers of acquisition

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

- (a) no notice to treat is to be served under Part 1 of the 1965 Act as applied to the acquisition of land by article 14 (application of Part 1 of the 1965 Act); and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 15 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The powers conferred by article 18 (temporary use of land for construction of works) cease at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents Network Rail remaining in possession of land after the end of that period, if the land was entered and possession of it was taken before the end of that period.

PART 4

OPERATION OF THE AUTHORISED TRAMROAD

Planning permission

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

Power to lop trees overhanging the authorised works

26.—(1) The promoter may fell or lop any tree or shrub near any part of the authorised works, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised works or any apparatus used on the authorised works; or
- (b) from constituting a danger to passengers or other persons using the authorised works.

(2) In exercising the powers conferred by paragraph (1), the promoter must not do any unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from the exercise of those powers.

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

Power to operate and use the authorised tramroad

27.—(1) The promoter may operate and use the authorised tramroad and the other authorised works as a system, or part of a system, of transport for the carriage of passengers and goods.

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

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

Power to charge fares

28.—(1) The promoter may demand, take and recover or waive such charges for carrying passengers or goods on the authorised tramroad, or for any other services or facilities provided in connection with the operation of the authorised tramroad, as it thinks fit.

(2) The promoter may enter into and carry into effect agreements with other persons providing public passenger transport services with regard to the issuing of tickets and the making of through ticketing arrangements or for the purpose of generally co-ordinating the provision of those services with the operation of the authorised tramroad.

(3) In this article “public passenger transport service” has the meaning given by section 63(10)(a) (functions of local councils with respect to passenger transport) of the Transport Act 1985(b).

Removal of obstructions

29.—(1) If any obstruction is caused to tramcars using the authorised tramroad by a vehicle waiting, loading, unloading or breaking down on any part of the tramroad, the person in charge of the vehicle must immediately remove it; and if that person fails to do so the promoter may take all reasonable steps to remove the obstruction and may recover the expenses reasonably incurred in doing so from—

- (a) any person by whom the vehicle was put or left so as to become an obstruction to tramcars; or
- (b) any person who was the owner of the vehicle at that time unless that person shows that, at that time, the person was not concerned in or aware of the vehicle being so put or left.

(2) If any obstruction is caused to tramcars using the authorised tramroad by a load falling on the tramroad from a vehicle, the person in charge of the vehicle must immediately remove the load from the tramroad; and if that person fails to do so, the promoter may take all reasonable steps to remove the load and may recover the expenses reasonably incurred in doing so from—

- (a) any person who was in charge of the vehicle at the time when the load fell from it; or
- (b) any person who was the owner of the vehicle at that time unless that person shows that, at that time, the person was not concerned in, or aware of, the vehicle being in the place at which the load fell from it.

(3) For the purposes of this article the owner of a vehicle is taken to be the person by whom the vehicle is kept; and in determining for those purposes who was the owner of the vehicle at any time, it is presumed (unless the contrary appears) that the owner was the person in whose name the vehicle was at that time registered under the Vehicle Excise and Registration Act 1994(c).

(4) A person who, wilfully and without lawful excuse—

- (a) interferes with or removes the authorised tramroad or any part of the authorised tramroad or the works connected with it;
- (b) places or throws materials or objects of any kind on any part of the authorised tramroad; or
- (c) does anything which obstructs any tramcar using the authorised tramroad, whether or not such obstruction endangers the lives of any person in the tramcars,

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

(a) 1993 c. 43.
(b) 1985 c. 67.
(c) 1994 c. 22.

Tramcars deemed public service vehicles

30.—(1) On such day as may be appointed under paragraph (2), regulations made, or having effect as if made, under section 24, 25 (regulation of conduct) or 60(1)(j) or (k) (general power to make regulations) of the Public Passenger Vehicles Act 1981(a) are to have effect as if the tramcar used on the authorised tramroad for the carriage of passengers were public service vehicles used in the provision of a local service within the meaning of the Transport Act 1985(b).

(2) The Executive may appoint a day for the purpose of any regulation mentioned in paragraph (1), the day so appointed being fixed in accordance with paragraph (3).

(3) The Executive must publish in a newspaper circulating in this area, notice of the general effect of the enactments for the purposes of which the day has been fixed, and the day so fixed must not be earlier than the expiration of 28 days from the date of the publication of the notice.

(4) A photocopy or other reproduction certified by a person duly authorised by the promoter to be a true reproduction of a page, or part of a page, of any newspaper bearing the date of its publication and containing the notice mentioned in paragraph (3) is evidence of the publication of the notice and of the date of publication.

PART 5

MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

31.—(1) This article applies to—

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

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

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants affects 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.

Trespass

32.—(1) Any person who—

- (a) trespasses on any part of the authorised tramroad; or

(a) 1981 c. 14.

(b) 1985 c. 67.

- (b) trespasses on any land of the Executive in dangerous proximity to the authorised tramroad or to any electrical or other apparatus used for or in connection with the operation of the authorised tramroad,

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

(2) No person is to be convicted of an offence under this article unless it is shown that a notice warning the public not to trespass on the authorised tramroad was clearly exhibited and maintained at the station on the authorised tramroad nearest the place where the offence is alleged to have been committed.

Power to contract for police services

33.—(1) The promoter may enter into any agreement with a local policing body and its chief officer for the police force maintained by that body to provide policing services for or in connection with the authorised tramroad, including at any tramroad premises.

(2) Any such agreement may provide for—

- (a) the promoter to make such payment or other consideration for those policing services as the parties may agree; and
- (b) such incidental and ancillary matters at the parties consider appropriate.

(3) In this article—

- (a) “chief officer” means a chief officer of police within the meaning of the Police Act 1996(a) or the Chief Constable of the British Transport Police Force; and
- (b) “local policing body” means a local policing body within the meaning of that Act or the British Transport Police Authority within the meaning of the Railways and Transport Safety Act 2003(b).

Application of general provisions of 1988 Act and 1989 Act

34. The following provisions of the 1988 Act and 1989 Act conferring general powers on the Executive with respect to the LRT system, have effect as if, for any reference in those provisions to the LRT system as defined by those Acts, there were substituted a reference to the authorised tramroad—

in the 1988 Act—

- section 41 (bylaws relating to LRT system); and
- section 44 (rating of LTR system); and

in the 1989 Act—

- section 16 (interpretation for Part 5);
- section 17 (operation of Part 5);
- section 18 (penalty fares);
- section 19 (amount of penalty fare);
- section 20 (document to be issued in connection with penalty fare requirement);
- section 21 (notice of penalty fare provisions);
- section 22 (supplementary provisions);
- section 23 (exclusive of double liability);
- section 27 (bylaws); and

(a) 1996 c. 16.

(b) 2003 c. 20.

section 28 (powers of disposal, agreements for operation etc.).

Disclosure of confidential information

35. A person who—

- (a) enters a factory, workshop or workplace under article 9 (protective works to buildings), or article 10 (power to survey and investigate land); and
- (b) discloses to any person any information obtained as a result of that entry and relating to any manufacturing process or trade secret,

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

Defence in respect of statutory nuisance

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

- (a) that the nuisance relates to premises used by the promoter for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to the authorised works and that the nuisance is attributable to the carrying out of works which are being carried out in accordance with a notice served under section 60 (control of noise on construction sites) or a consent given under section 61(c) (prior consent for work on construction sites) of the Control of Pollution Act 1974(d); or
- (b) that the nuisance is a consequence of the operation or maintenance of the authorised tramroad and that it cannot reasonably be avoided.

(2) The following provisions of the Control of Pollution Act 1974, namely—

- (a) section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990); and
- (b) section 65(8) (corresponding provision in relation to consent for registered noise level to be exceeded),

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

(3) The provisions of this article do not affect any rule of common law having similar effect.

Statutory undertakers

37. The provisions of Schedule 7 (provisions relating to statutory undertakers) have effect.

For the protection of the Environment Agency

38. The provisions of Schedule 8 (for the protection of the Environment Agency) have effect.

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- (a) 1990 c. 43.
 - (b) Section 79(1) was amended by section 2(2) of the Noise and Statutory Nuisance Act 1993, section 120 of, and paragraph 2(a) of Schedule 17 and paragraph 89(2) of Schedule 22 to, the Environment Act 1995, sections 101(2) and 102(2) of the Clean Neighbourhoods and Environment Act 2005 (c. 16) and sections 109(2), 110(2), 111(2) and 112(2)(a) of the Public Health etc. (Scotland) Act 2008 (asp. 5).
 - (c) Section 61 was amended by Schedule 7 to the Building Act 1984 (c. 55), paragraph 15(3) of Schedule 15 to the Environmental Protection Act 1990 (c. 43), Schedule 24 to the Environment Act 1995 and paragraph 10 of Schedule 6 to the Building (Scotland) Act 2003 (asp. 8).
 - (d) 1974 c. 40.

For the protection of electricity, gas, water and sewerage undertakers

39. The provisions of Schedule 9 (for the protection of electricity, gas, water and sewerage undertakers) have effect.

Certification of plans etc.

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

Service of notices

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

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

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

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978^(a) 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 he has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, 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 is taken to be fulfilled where the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission either in writing or by electronic transmission.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic transmission given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

(a) 1978 c. 30.

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

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

No double recovery

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

Arbitration

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

Signed by authority of the Secretary of State for Transport

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

25th November 2015

SCHEDULES

SCHEDULE 1

Article 2

SCHEDULED WORKS

In the City of Sheffield—

Work No. 1 – A railway forming a double line of tramroad (100 metres in length), commencing by a junction with the LRT system at a point 4 metres north of the bridge carrying the LRT system over the River Don, passing north-eastwards then eastwards beneath the viaduct carrying the M1 Motorway and then north-eastwards and terminating at a point 100 metres north-east of its commencement.

Work No. 2 – A railway forming a single line of tramroad (70 metres in length), commencing by a junction with the termination of Work No. 1, passing eastwards and terminating at a point 70 metres north-east of the viaduct carrying the M1 Motorway and A631 Trunk Road and forming a connection to the Sheffield to Rotherham Railway.

SCHEDULE 2

Article 13

ACQUISITION OF CERTAIN LANDS FOR ANCILLARY WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on the works and land plan</i>	<i>(3)</i> <i>Purpose for which land may be acquired</i>
City of Sheffield	10	Provision of access for construction and maintenance

SCHEDULE 3

Article 17

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on the works and land plan</i>	<i>(3)</i> <i>Purpose for which land may be acquired</i>
City of Sheffield	11	Permanent right of access

SCHEDULE 4

Article 16

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply with the necessary modifications as respects compensation in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (a) for “land is acquired or taken” substitute “a right over land is purchased”; and
- (b) for “acquired or taken from him” substitute “over which the right is exercisable”.

(3) For section 58(1)(b) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 (other provisions as to divided land) of the 1965 Act as substituted by paragraph 5, substitute—

“(1) In determining under section 8(1) or 34(2) of the Compulsory Purchase Act 1965, or section 166(2) of the Town and Country Planning Act 1990 whether—

- (a) a right over land consisting of a house, building or manufactory can be taken without material detriment or damage to the house, building or manufactory; or
- (b) a right over land consisting of a park or garden belonging to a house can be taken without seriously affecting the amenity or convenience of the house,

the Upper Tribunal must take into account not only the effect of the acquisition of the right but also the use to be made of the right proposed to be acquired, and, in a case where the right is proposed to be acquired for works or other purposes extending to other land, the effect of the whole of the works and the use to be made of the other land.”.

Application of the 1965 Act

3.—(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are to be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or
- (b) the land over which the right is or is to be exercisable.

(2) Without limitation on the scope of sub-paragraph (1), Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

4. For section 7 (measure of compensation in case of severance) of the 1965 Act there is substituted the following section—

“**7.** In assessing the compensation to be paid by the acquiring authority under this Act regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

5. For section 8 (other provisions as to divided land) of the 1965 Act substitute the following—

“**8.—**(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

(a) 1973 c. 26.

(b) Section 58(1) was amended by section 16(3) of, and Schedule 5 to, the Compulsory Purchase (Vesting Declarations) Act 1981 (c. 66), section 4 of, and paragraph 29(1) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2009/1307.

- (a) a question of disputed compensation in respect of the purchase of the right would apart from this section fall to be determined by the Lands Tribunal (“the tribunal”); and
- (b) before the tribunal has determined that question the person satisfies the tribunal that the person has an interest which he is able and willing to sell in the whole of the relevant land and—
 - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased without material detriment to that land; or
 - (ii) where that land consists of such a park or garden, that the right cannot be purchased without seriously affecting the amenity or convenience of the house to which that land belongs,

the Network Rail (Tinsley Chord) Order 2015^(a) (“the Order”), in relation to that person, ceases to authorise the purchase of the right and is deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section shall be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”.

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified so as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired is vested absolutely in the acquiring authority.

7. Section 11^(b) (powers of entry) of the 1965 Act is modified so as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right, it has power, exercisable in the equivalent circumstances and subject to the equivalent conditions, to enter for the purpose of exercising that right (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12^(c) (penalty for unauthorised entry) and 13^(d) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

^(a) S.I. 2015/1876

^(b) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1) and S.I. 2009/1307.

^(c) Section 12 was amended by section 56(2) of, and part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).

^(d) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

8. Section 20(a) (protection for interests of tenants at will etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

9. Section 22 (interests omitted from purchase) of the 1965 Act is modified so as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 5

Article 7

ACCOMMODATION CROSSING

<i>(1)</i> Area	<i>(2)</i> Access track to be crossed on the level
City of Sheffield	Existing Highways Agency access track at the approximate OS grid references 439718, 391173.

SCHEDULE 6

Article 18

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> Area	<i>(2)</i> Number of land shown on the works and land plan	<i>(3)</i> Purpose for which temporary possession may be taken	<i>(4)</i> Authorised work
City of Sheffield	3, 4, 6, 7	Working site and access for construction.	Work No. 1
City of Sheffield	9, 12, 13	Site compound for the storage of apparatus and equipment.	Work No. 2
City of Sheffield	11	Access for construction.	Works Nos. 1 and 2

SCHEDULE 7

Article 37

PROVISIONS RELATING TO STATUTORY UNDERTAKERS

Apparatus of statutory undertakers etc. on land acquired

1. In this Schedule—

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

(a) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 and S.I. 2009/1307.

(b) 2003 c. 21.

“public utility promoters” has the same meaning as in the Highways Act 1980(a).

2. Sections 271 to 274(b) (extinguishment of rights of statutory undertakers etc.) of the 1990 Act apply in relation to any land acquired or appropriated by Network Rail under this Order subject to the following provisions of this Schedule; and all such other provisions of that Act as apply for the purposes of those provisions (including sections 275 to 278, which contain provisions consequential on the extinguishment of any rights under sections 271 and 272, and sections 279(2) to (4), 280 and 282(c), which provide for the payment of compensation) have effect accordingly.

3. In the provisions of the 1990 Act, as applied by paragraph 2, references to the appropriate Minister are references to the Secretary of State.

4. Where any apparatus of public utility promoters or of a public communications provider is removed in pursuance of a notice or order given or made under section 271, 272 or 273 of the 1990 Act, as applied by paragraph 2, 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 promoter 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.

5. Paragraph 4 does not apply in the case of the removal of a public sewer but where such a sewer is removed in pursuance of such a notice or order as is mentioned in that paragraph, any person who is—

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

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

SCHEDULE 8

Article 38

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

1.—(1) The following provisions of this Schedule, unless otherwise agreed in writing between the promoter and the Agency, have effect.

(2) In this Part of this Schedule—

“the Agency” means the Environment Agency;

“construction” includes execution, placing, altering, replacing, relaying and removal, and “construct” and “constructed” are construed accordingly;

“drainage work” means any watercourse and includes any land which provides or is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

“the fishery” means the relevant part of the waterway containing fish and the spawn, habitat or food of such fish;

“plans” includes sections, drawings, specifications and method statements;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 16 metres of a drainage work or is otherwise likely to—

(a) 1980 c. 66.

(b) Section 272 to 274 were amended by paragraph 103(1) and (2) of Schedule 17 to the Communications Act 2003 (c. 21).

(c) Section 279(3) was amended by paragraph 103(1) and (2), and section 280 was amended by paragraph 104, of Schedule 17 to the Communications Act 2003. Sections 280 and 282 were amended by S.I. 2009/1307.

- (a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
- (b) affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;
- (c) cause obstruction to the free passage of fish or damage to any fishery; or
- (d) affect the conservation, distribution or use of water resources; and

“waterway” means that part of the River Don within the limits of deviation.

2.—(1) Before beginning to construct any specified work, the promoter must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the submission of the plans reasonably require.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 13.

(3) Any approval of the Agency required under this paragraph—

- (a) must not be unreasonably withheld;
- (b) is deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans for approval and, in the case of a refusal, accompanied by a statement of the grounds of refusal; and
- (c) may be given subject to such reasonable requirements as the Agency may make for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties.

(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

3. Without limitation on the scope of paragraph 2, the requirements which the Agency may make under that paragraph include conditions requiring the promoter at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

4.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 3, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Schedule; and
- (b) to the reasonable satisfaction of the Agency,

and an officer of the Agency is entitled to watch and inspect the construction of such works.

(2) The promoter must give to the Agency not less than 14 days’ notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is brought into use.

(3) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Schedule, the Agency may by notice in writing require the promoter at the promoter’s own expense to comply with the requirements of this Schedule or (if the promoter so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(4) Subject to sub-paragraph (5) and paragraph 8, if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served upon the promoter, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any expenditure incurred by it in so doing is recoverable from the promoter.

(5) In the event of any dispute as to whether sub-paragraph (3) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency must not, except in a case of emergency, exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

5.—(1) Subject to the provisions of this Schedule and except to the extent that the Agency or another person is liable to maintain any such work and is not precluded by the exercise of the powers conferred by this Order from so doing, the promoter must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation or on land held by the promoter for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the promoter is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the promoter to repair and restore the work, or any part of such work, or (if the promoter so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to paragraph 8, if, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the promoter, the promoter has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the promoter.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not, except in a case of emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined.

6. Subject to paragraph 8, if by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the promoter to the reasonable satisfaction of the Agency and if the promoter fails to do so, the Agency may make good the impairment or damage and recover from the promoter the expense reasonably incurred by it in doing so.

7.—(1) The promoter must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the promoter requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) Subject to paragraph 8, if within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery,

the promoter fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and may recover from the promoter the expense reasonably incurred by it in doing so.

(4) Subject to paragraph 8, in any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the promoter the reasonable cost of so doing provided that notice specifying those steps is served on the promoter as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

8. Nothing in paragraphs 4(4), 5(3), 6, 7(3) and (4) authorises the Agency to execute works on or affecting the authorised works.

9. The promoter must indemnify the Agency in respect of all costs, charges and expenses which the Agency may reasonably incur or have to pay or which it may sustain—

- (a) in the examination or approval of plans under this Part of this Schedule; and
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Schedule.

10.—(1) Without affecting the other provisions of this Part of this Schedule, the promoter must indemnify the Agency in respect of all claims, demands, proceedings, costs, damages, expenses or loss, which may be made or taken against, recovered from, or incurred by, the Agency by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any damage to the fishery;
- (c) any raising or lowering of the water table in land adjoining the authorised works or any sewers, drains and watercourses;
- (d) any flooding or increased flooding of any such lands; or
- (e) inadequate water quality in any watercourse or other surface waters or in any groundwater,

which is caused by the construction of any of the specified works or any act or omission of the promoter, its contractors, agents or employees whilst engaged upon the work.

(2) The Agency must give to the promoter reasonable notice of any such claim or demand and no settlement or compromise may be made without the agreement of the promoter, with such agreement not to be unreasonably withheld or delayed.

11. The fact that any work or thing has been executed or done by the promoter in accordance with a plan approved or deemed to be approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the promoter from any liability under the provisions of this Schedule.

12. For the purposes of Chapter 2 (abstraction and impounding of water) of Part 2 of the Water Resources Act 1991^(a), section 109 (as to structures in, over or under watercourses) of that Act and Part 4 (passage of eels) of the Eels (England and Wales) Regulations 2009^(b) as applying to the construction of any specified work, any consent or approval given or deemed to be given by the Agency under this Schedule with respect to such construction is deemed also to constitute a licence under that Chapter to obstruct or impede the flow of inland waters at that point by means of impounding works, to constitute a consent or approval under section 109 and to discharge any liability on the promoter to carry out anything under regulation 14 (eel passes) of the Eels (England and Wales) Regulations 2009, as the case may be.

(a) 1991 c. 57.

(b) S.I. 2009/3344.

13. Any dispute arising between the promoter and the Agency under this Schedule, if the parties agree, is to be determined by arbitration under article 43 (arbitration), but otherwise is to be determined by the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Transport acting jointly on a reference to them by the promoter or the Agency, after notice in writing by one to the other.

SCHEDULE 9

Article 39

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1. For the protection of the undertakers referred to in this Schedule the following provisions, unless otherwise agreed in writing between the promoter and the undertaker concerned, have effect.

2. The provisions of paragraph 1 of Schedule 7 (provisions relating to statutory undertakers), insofar as they relate to the removal of apparatus, do not apply in relation to apparatus to which this Schedule applies.

3. In this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the undertaker under the Water Industry Act 1991; and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land; and

“undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(b);
- (c) a water undertaker within the meaning of the Water Industry Act 1991; and
- (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

(a) 1989 c. 29.

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

for the area of the authorised works, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

4. Regardless of any provision in this Order or anything shown on the works and land plan, the promoter must not acquire any apparatus otherwise than by agreement.

5.—(1) If, in the exercise of the powers conferred by this Order, the promoter acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Schedule and any right of an undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the undertaker in question.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the promoter requires the removal of any apparatus placed in that land, it must give to the undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an undertaker reasonably needs to remove any of its apparatus) the promoter must, subject to sub-paragraph (3), afford to the undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the promoter and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the promoter, or the promoter is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the undertaker in question must, on receipt of a written notice to that effect from the promoter, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the promoter under this Schedule is to be constructed in such manner and in such line or situation as may be agreed between the undertaker in question and the promoter or in default of agreement settled by arbitration in accordance with article 43 (arbitration).

(5) The undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 43, and after the grant to the undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the promoter to be removed under the provisions of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the promoter gives notice in writing to the undertaker in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the promoter, that work, instead of being executed by the undertaker, must be executed by the promoter without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the undertaker.

(7) Nothing in sub-paragraph (6) authorises the promoter to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

6.—(1) Where, in accordance with the provisions of this Schedule, the promoter affords to an undertaker facilities and rights for the construction and maintenance in land of the promoter of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the promoter and the undertaker in question or in default of agreement settled by arbitration in accordance with article 43 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in or along any tramroad of the promoter, the arbitrator must—

(a) give effect to all reasonable requirements of the promoter for ensuring the safety and efficient operation of the mentioned tramroad and for securing any subsequent alterations

or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the promoter or the traffic on the authorised tramroad; and

- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or along the authorised tramroad for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by the promoter in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the promoter to that undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

7.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 5(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the promoter under paragraph 5(2), the promoter must submit to the undertaker in question a plan, section and description of the works to be executed.

(2) Those works are to be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by an undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If an undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the promoter, reasonably requires the removal of any apparatus and gives written notice to the promoter of that requirement, paragraphs 1 to 6 apply as if the removal of the apparatus had been required by the promoter under paragraph 5(2).

(5) Nothing in this paragraph precludes the promoter from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The promoter is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

8.—(1) Subject to the following provisions of this paragraph, the promoter must repay to an undertaker the reasonable expenses incurred by the undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus (including costs or compensation payable in connection with the acquisition of land for that purpose) which may be required in consequence of the execution of any such works as are referred to in paragraph 5(2).

(2) The value of any apparatus removed under the provisions of this Schedule is to be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with the provisions of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; 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 situated,

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 promoter or, in default of agreement, is not determined by arbitration in accordance with article 43 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Schedule 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 sub-paragraph would be payable to the undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus must not 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 must be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to an undertaker in respect of works by virtue of sub-paragraph (1) 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 undertaker 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.

9.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 5(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of an undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any undertaker, the promoter must—

- (a) bear and pay the cost reasonably incurred by that undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that undertaker for any other expenses, loss, damages, penalty or costs incurred by the undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the promoter with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of any undertaker, its officers, servants, contractors or agents.

(3) An undertaker must give the promoter reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the promoter which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

10. Nothing in this Schedule affects the provisions of any enactment or agreement regulating the relations between the promoter and an undertaker in respect of any apparatus laid or erected in land belonging to the promoter on the date on which this Order is made.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises South Yorkshire Passenger Transport Executive (“the Executive”) and Network Rail Infrastructure Limited acting either together or individually (referred to in this Order as “the promoter”) to construct and operate the Tinsley Chord. The Tinsley Chord is a tramroad which will connect the Supertram and Network Rail systems and will be used by tram-trains.

For these purposes the Order confers powers on Network Rail, compulsorily or by agreement, to acquire land and rights in land and to use land.

The Order contains protective provisions for the benefit of the Environment Agency and undertakers affected by the works authorised by the Order.

A copy of the book of reference, the sections and the works and land plan mentioned in this Order and certified in accordance with article 40 (certification of plans etc.) of this Order may be inspected free of charge during working hours at the offices of the Executive at 11 Broad Street West, Sheffield, South Yorkshire, S1 2BQ and at the offices of Network Rail Infrastructure Limited at 1 Eversholt Street, London, NW1 2DN.

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