
 S T A T U T O R Y I N S T R U M E N T S

200[] No. []

**TRANSPORT AND WORKS, ENGLAND TRANSPORT,
ENGLAND**

The Heathrow Airtrack Order 200[]

Made - - - -

Coming into force - -

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PART 1 PRELIMINARY

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”).

[Objections to that application have been withdrawn.]

[The Secretary of State caused an inquiry to be held for the purposes of the application pursuant to section 11 of the 1992 Act.]

[The Secretary of State, having considered [the objections made and not withdrawn] [and] [the report of the person who held the inquiry], has determined to make an Order giving effect to the [proposals comprised in the application [without modifications] [with modifications which in the opinion of the Secretary of State do not make any substantial change in the proposals]] [proposals concerned with modifications which in the opinion of the Secretary of State make a substantial change in the proposals].

[The Secretary of State having considered representations duly made pursuant to section 13 of the 1992 Act, has determined to make the Order applied for with modifications.]

Notice of the Secretary of State’s determination was published in the London Gazette on [].

(a) S.I. 2006/1466.

(b) 1992 c. 42. As amended by S.I. 1995/1541, S.I. 1998/2226, S.I. 2000/3199 and S.I. 2006/958.

Accordingly, the Secretary of State, in exercise of the powers conferred by sections 1 and 5 of, and paragraphs 1 to 5, 7, 8, 10 to 12 and 15 to 17 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 Heathrow Airtrack Order 200[] and shall come into force on [] 200[].

Interpretation

2.—(1) In this Order—

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

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

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

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

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

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

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

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

“carriageway” has the same meaning as in the Highways Act 1980(e);

“the Company” means Heathrow Airport Limited (Company No. 0199107) whose registered office is at 130 Wilton Road, London SW1V 1LQ;

“cycle track” has the same meaning as in the Highways Act 1980;

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

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

“electronic transmission” means a communication transmitted—

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

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

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

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

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

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

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace, and

“maintenance” shall be construed accordingly;

(a) 1961 c. 33.
(b) 1965 c. 56.
(c) 1990 c. 8.
(d) 1991 c. 22.
(e) 1980 c. 66.

“the Order limits” means the limits of deviation, the limits of land to be acquired or used and the protective works limits;

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

“the protective works limits” means the protective works limits shown on the deposited plans;

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

“statutory undertaker” means—

(a) any person who is a statutory undertaker for any of the purposes of the 1990 Act; and

(b) any public communications provider within the meaning of section 151(1) of the Communications Act 2003(b);

“street” includes part of a street;

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

“the tribunal” means the Upper Tribunal; and

“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.

(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 shall be taken to be measured along the scheduled work.

(4) References in this Order to numbered plots are references to plot numbers on the deposited plans.

(5) References in this Order to points identified by letters (or letters and numbers) are construed as references to points on the deposited plans.

Incorporation of Railways Clauses Acts

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

section 58 (company to repair roads used by them), except for the words from “and if any question” to the end;

section 71 (additional accommodation works by owners), except for the words “or directed by such justices to be made by the company” and “or, in case of difference, as shall be authorised by two justices”;

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

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

sections 78 to 85E and Schedules 1 to 3 (minerals under railways), as respectively substituted and inserted by section 15 of the Mines (Working Facilities and Support) Act 1923(d);

sections 103 and 104 (refusal to quit carriage at destination);

section 105 (carriage of dangerous goods on railway);

section 145 (recovery of penalties); and

section 154 (transient offenders).

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

(a) 1981 c. 67.

(b) 2003 c. 21.

(c) 1845 c. 20.

(d) 1923 c. 20.

(e) 1863 c. 92.

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

“the company” means the Company;

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

“lease” includes an agreement for a lease;

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

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

“the special Act” means this Order;

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

Application of the 1991 Act

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

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

(2) The provisions of the 1991 Act mentioned in paragraph (3) which, together with other provisions of that Act, apply in relation to the execution of street works and any regulations made or code of practice issued or approved under those provisions shall apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the Company under the powers conferred by article 10 (temporary stopping up of streets) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(3) The provisions of the 1991 Act referred to in paragraph (2) are—

- section 54 (advance notice of certain works), subject to paragraph (4);
- section 55 (notice of starting date of works), subject to paragraph (4);
- section 57 (notice of emergency works);
- section 59 (general duty of street authority to co-ordinate works);
- section 60 (general duty of undertakers to co-operate);
- section 68 (facilities to be afforded to street authority);
- section 69 (works likely to affect other apparatus in the street);
- section 76 (liability for cost of temporary traffic regulation);
- section 77 (liability for cost of use of alternative route); and

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

(4) Sections 54 and 55 of the 1991 Act as applied by paragraph (2) shall have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

(5) Nothing in article 12 (construction and maintenance of new or altered streets) shall—

- (a) prejudice the operation of section 87 of the 1991 Act (prospectively maintainable highways); and the Company shall not by reason of any duty under that article to

- maintain a street be taken to be a street authority in relation to that street for the purposes of Part 3 of that Act; or
- (b) have effect in relation to street works with regard to which the provisions of Part 3 of the 1991 Act apply.

PART 2

WORKS PROVISIONS

Principal powers

Power to construct and maintain works

5.—(1) The Company 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 deposited plans and in accordance with the levels shown on the deposited sections.

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

- (a) within plot nos. 2, 3, 4 and 6 in the District of Spelthorne, County of Surrey, a new station building at Staines Station together with ancillary facilities, works and conveniences;
- (b) within plot nos. 1 and 6 in the London Borough of Hounslow, new depot facilities including depot buildings, offices, yards, machinery, plant, apparatus and other works and conveniences;
- (c) railway electrification and signalling works;
- (d) approaches, bridges, ramps, means of access, footpaths, shafts and stagings as the Company thinks fit;
- (e) embankments, aprons, abutments, retaining walls, wing walls, noise barriers and culverts;
- (f) works to alter the position of apparatus, including mains, sewers, drains and cables; and
- (g) works to alter the course of, or otherwise interfere with, a watercourse other than a navigable watercourse.

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

(5) Paragraphs (3)(c) to (g) and (4) shall 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 (acquisition of certain lands for ancillary works) for the purpose specified in relation to that land in column (3) of that Schedule.

(6) The Company may within the limits of deviation and limits of land to be acquired or used—

- (a) carry out and maintain landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised works (other than works authorised by this paragraph); and
- (b) carry out and maintain works for the benefit or protection of land affected by the authorised works (other than works authorised by this paragraph).

Power to deviate

6. In constructing or maintaining any of the scheduled works, the Company may—

- (a) deviate laterally from the lines or situations shown on the deposited plans to the extent of the limits of deviation for that work; and

- (b) deviate vertically from the levels shown on the deposited 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.

Streets

Power to alter the layout of streets

7.—(1) Subject to paragraph (2), the Company may, in connection with any authorised work, alter the layout of any street within the limits of deviation and limits of land to be acquired or used and the layout of any street having a junction with such a street; and, without prejudice to the generality of this paragraph, the Company may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footway, cycletrack or verge within the street;
- (b) alter the level of any such kerb, footway, cycle track or verge;
- (c) reduce the width of the carriageway of the street;
- (d) construct, alter or remove traffic islands and central reserves; and
- (e) carry out works for the provision or alteration of parking spaces.

(2) The powers in paragraph (1) shall not be exercised without the consent of the street authority, but such consent shall not be unreasonably withheld.

(3) If a street authority fails to notify the Company of its decision within 28 days of receiving an application for consent under paragraph (2) that street authority shall be deemed to have granted consent.

Power to execute street works

8.—(1) The Company may, for the purposes of the authorised works, enter upon so much of any of the streets within the limits of deviation and limits of land to be acquired or used and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it, or tunnel or bore under the street;
- (b) place apparatus in the street;
- (c) maintain apparatus in the street or change its position; and
- (d) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b) and (c).

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

Stopping up of streets

9.—(1) Subject to the provisions of this article, the Company may, in connection with the construction of the authorised works, stop up each of the streets specified in columns (1) and (2) of Parts 1 and 2 of Schedule 3 (streets to be stopped up) to the extent specified, by reference to the letters and numbers shown on the deposited plans, in column (3) of those Parts of that Schedule.

(2) No street specified in columns (1) and (2) of Part 1 of Schedule 3 (being a street to be stopped up for which a substitute is to be provided) shall be wholly or partly stopped up under this article unless—

- (a) the new street to be substituted for it, which is specified in column (4) of that Part of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and subsequently maintained by the Company, to the reasonable satisfaction of the street authority, between the commencement and

termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).

(3) No street specified in columns (1) and (2) of Part 2 of Schedule 3 (being a street to be stopped up for which no substitute is to be provided) shall be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the land which abuts on either side of the street to be stopped up.

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

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

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

- (a) all rights of way over or along the street so stopped up shall be extinguished; and
- (b) the Company may appropriate and use for the purposes of its railway undertaking so much of the site of the street as is bounded on both sides by land owned by the Company.

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

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

(8) For the purposes of section 19 of the South Western Railway (Various Powers) Act 1880(a) Work No. 1A once constructed and opened for public use, shall be treated as the footbridge to be provided in place of the level crossing described in sub-section A of that section.

(9) Following the stopping up of the cycle track adjacent to Station Path between the points set out in the third column of Part 1 of Schedule 3 the existing highway between the points set out in the fourth column of Part 1 of Schedule 3 shall be deemed to be a cycle track.

Temporary stopping up of streets

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

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

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

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

(4) Without prejudice to the generality of paragraph (1), the Company may exercise the powers conferred by this article in relation to the streets specified in columns (1) and (2) of Schedule 4 (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the deposited plans, in column (3) of that Schedule.

(5) The Company shall not exercise the powers conferred by this article—

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

(a) 1880 c. clxxxiii.

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

(7) If a street authority fails to notify the Company of its decision within 28 days of receiving an application for consent under paragraph (5)(b) that street authority shall be deemed to have granted consent.

Access to works

11.—(1) The Company may, for the purposes of the authorised works—

- (a) form and lay out means of access, or improve existing means of access, in the locations marked on the deposited plans; and
- (b) with the approval of the highway authority, such approval not to be unreasonably withheld, form and lay out such other means of access or improve existing means of access, at such locations within the limits of deviation and limits of land to be acquired or used as the Company reasonably requires for the purposes of the authorised works.

(2) If a street authority fails to notify the Company of its decision within 28 days of receiving an application for consent under paragraph (1) that street authority shall be deemed to have granted consent.

Construction and maintenance of new or altered streets

12.—(1) Any new highway to be constructed under this Order shall be completed to the reasonable satisfaction of the highway authority and shall be maintained by and at the expense of the Company for a period of 12 months from its completion and at the expiry of that period by and at the expense of the highway authority.

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

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

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

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

- (a) the character of the street and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the Company knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street;
- (e) where the Company could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

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

instructions with regard to the maintenance of the street and that the competent person had carried out those instructions.

Construction of bridges and tunnels

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

(2) If a highway authority fails to notify the Company of its decision within 28 days of receiving an application for consent under paragraph (1) that highway authority shall be deemed to have granted consent.

Agreements with street authorities

14.—(1) A street authority and the Company may enter into agreements with respect to—

- (a) the construction of any new street (including any structure carrying the street over or under a railway) under the powers conferred by this Order;
- (b) the maintenance of the structure of any bridge or tunnel carrying a street over or under a railway;
- (c) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
- (d) the execution in the street of any of the works referred to in article 8(1) (power to execute street works).

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

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

Replacement and closure of footpath level crossings

15.—(1) The Company may, in connection with the construction of the authorised works, stop up—

- (a) so much of footpath FP 13 as lies between points A2 and B2; and
- (b) so much of footpath FP 18 as lies between points H4 and J4.

(2) On a highway or part of a highway being stopped up under this article—

- (a) all rights of way over or along it shall be extinguished; and
- (b) the place where the former highway crossed a railway shall cease to be a level crossing for the purposes of any enactment.

(3) The Company shall not exercise the powers conferred by paragraph (1)(a) until a new footpath has been provided between points A2 and A3.

(4) The Company shall not exercise the powers conferred by paragraph (1)(b) until a new footpath has been provided between points C3 and E4, passing over Works Nos. 3A and 3B.

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

Creation of public paths

16.—(1) On completion of construction of the new footpaths—

- (a) between points E3 and A3;
- (b) between points C3 and D3;

- (c) between points R4 and J5;
- (d) between points L4 and K5,

those footpaths shall be public footpaths and subject to paragraphs (2) to (5), in relation to those new footpaths, section 28 of the Highways Act 1980 (compensation for loss caused by public path creation order) shall apply as if the right of way between those points had been created by a public path creation order.

(2) In its application by virtue of paragraph (1), section 28 of the Highways Act 1980(a) shall have effect with the following modifications.

(3) In sub-section (1), for the words “the authority by whom the order was made” there shall be substituted the words “Heathrow Airport Limited”.

(4) For sub-section (2), there shall be substituted—

“(2) A claim for compensation under this section shall be made to Heathrow Airport Limited in writing within six months from the coming into force of the Heathrow Airtrack Order 200[X] and shall be served on Heathrow Airport Limited by delivering it at, or by sending it by pre-paid post to, [].”

(5) Sub-section (3) shall be omitted.

(6) For the purposes of paragraphs (1) to (5), section 307 of the Highways Act 1980 (disputes as to compensation which are to be determined by Lands Tribunal and related provisions), in its application to section 28 by virtue of section 307(1), shall have effect as if in sub-section (2) for the words “the authority from whom the compensation in question is claimed”, there were substituted the words “Heathrow Airport Limited”.

Use of private roads for construction

17.—(1) The Company may use any private road within the Order limits for the passage of persons or vehicles (with or without materials, plant and machinery) for the purpose of or in connection with the construction of the authorised works.

(2) The Company shall compensate the person having the management of a road to which paragraph (1) applies for any loss which that person may suffer by reason of the exercise of the power conferred by that paragraph.

(3) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of such compensation, shall be determined under and in accordance with Part 1 of the 1961 Act.

Supplemental powers

Discharge of water

18.—(1) The Company 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 limits of deviation and the limits of land to be acquired or used, make openings into, and connections with, the watercourse, public sewer or drain.

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

(3) The Company shall 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 shall not be unreasonably withheld.

(a) 1980 c. 66.
(b) 1991 c. 56.

- (4) The Company shall 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 shall not be unreasonably withheld; and
 - (b) where that person has been given the opportunity to supervise the making of the opening.
- (5) The Company shall not, in the exercise of the powers conferred by this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.
- (6) The Company shall take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.
- (7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991(a).
- (8) If a person who receives an application for consent or approval fails to notify the Company of a decision within 28 days of receiving an application for consent under paragraph (3) or approval under paragraph (4)(a) that person shall be deemed to have granted consent or given approval, as the case may be.
- (9) In this article—
- (a) “public sewer or drain” means a sewer or drain which belongs to the Environment Agency, an internal drainage board, a local authority or a sewerage undertaker; and
 - (b) other expressions, excluding watercourses, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

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

- 19.—**(1) Subject to the following provisions of this article, the Company may at its own expense carry out such protective works to any building, road or apparatus of a statutory undertaker lying within the Order limits as the Company considers to be necessary or expedient.
- (2) Protective works may be carried out—
- (a) at any time before or during the construction in the vicinity of the building, road or apparatus of a statutory undertaker 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 of a statutory undertaker at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised works is first opened for use.
- (3) For the purpose of determining how the functions under this article are to be exercised the Company may enter and survey any building, go onto and survey any road or access and survey any apparatus of a statutory undertaker 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 of a statutory undertaker the Company may (subject to paragraphs (5) and (6))—
- (a) enter the building, go onto the road or access the apparatus and any land within the curtilage of the building or in which the apparatus is located; and
 - (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building (but outside its curtilage) or adjacent to the road or land in which 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;

(a) 1991 c. 57.

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

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

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land or owners of the road or the 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, go onto a road or access the apparatus to be referred to arbitration under article 55 (arbitration).

(7) The Company shall compensate the owners and occupiers of any building or land or owners of the road or the 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 or road or apparatus of a statutory undertaker; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised works constructed in the vicinity of the building, road or apparatus is first opened for use it appears that the protective works are inadequate to protect the building, road or apparatus against damage caused by the construction or operation of that part of the authorised works,

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

(9) Without prejudice to article 54 (no double recovery) nothing in this article shall relieve the Company from any liability to pay compensation under section 10(2) of the 1965 Act.

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

(11) In this article—

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

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

“road” includes any supporting structures.

Power to survey and investigate land

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

- (a) survey or investigate any land shown within the limits of deviation and the limits of land to be acquired or used;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions as the Company thinks fit on the land to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land;

- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes; and
- (e) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (d).

(2) 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 Company—

- (a) shall, if so required, before or after entering the land produce written evidence of authority to do so; and
- (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

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

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

but such consent shall not be unreasonably withheld.

(5) The Company shall compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) Nothing in this article shall obviate 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 which receives an application for consent fails to notify the Company of its decision within 14 days of receiving the application for consent:—

- (a) under paragraph (4)(a) in the case of a highway authority; or
- (b) under paragraph (4)(b) in the case of a street authority;

that authority shall be deemed to have granted consent.

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

21.—(1) The Company may acquire compulsorily—

- (a) so much of the land shown on the deposited plans 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 deposited plans 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.

(a) 1979 c. 46.

Application of Part 1 of the Compulsory Purchase Act 1965

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

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

(2) Part 1 of the 1965 Act, as applied, shall have 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

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

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

(3) In section 3 (preliminary notices) for subsection (1) there shall be substituted—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority shall 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)” there shall be substituted “(1)” and after “given” there shall be inserted “and published”.

(5) In that section, for subsections (5) and (6) there shall be substituted—

“(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” there shall be inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) shall be omitted.

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

(8) References to the 1965 Act shall be construed as references to that Act as applied to the acquisition of land under article 21 (power to acquire land).

Power to acquire new rights

24.—(1) The Company may acquire compulsorily such easements or other rights over any land referred to in paragraph (1)(a) or (b) of article 21 (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.

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

(2) The Company may impose restrictive covenants affecting any land referred to in paragraph (1)(a) or (b) of article 21 which is or will on completion of the works be above an underground railway as may be required for the purpose of protecting the underground railway.

(3) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 5 (modification of compensation and compulsory purchase enactments for creation of new rights)) where the Company acquires a right over land or the benefit of a covenant over land under paragraph (1) or (2) or article 25 (new rights etc., only to be acquired in certain lands) the Company shall not be required to acquire a greater interest in that land.

(4) Schedule 5 shall have effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article or article 25 of a right over land by the creation of a new right or the imposition of a restrictive covenant.

New rights etc., only to be acquired in certain lands

25. The Company may in or over any of the land shown on the deposited plans and specified in Schedule 6 (land in which only new rights etc., may be acquired) (being land shown on the deposited plans and described in the book of reference) acquire compulsorily such easements or other new rights as it may require for the purpose of constructing, maintaining, protecting, or renewing and using the authorised works.

Power to acquire subsoil or airspace only

26.—(1) The Company may acquire compulsorily so much of, or such rights in, the subsoil of or the airspace over the land referred to in paragraph (1)(a) or (b) of article 21 (power to acquire land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the Company acquires any part of or rights in the subsoil or airspace over of land under paragraph (1) it shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) shall not prevent article 32 (acquisition of part of certain properties) from applying where the Company acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Rights under or over streets

27.—(1) The Company may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the limits of deviation and the limits of land to be acquired or used as may be required for the purposes of the authorised works and may use the subsoil or air-space for those purposes or any other purpose ancillary to its railway undertaking.

(2) Subject to paragraph (4), the power under paragraph (1) may be exercised in relation to a street without the Company being required to acquire any part of the street or any easement or right in the street.

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

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

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

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

Temporary possession of land

Temporary use of land for construction of works

28.—(1) The Company 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 7 (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 specified in column (4) of that Schedule; and
 - (ii) any other land within the limits of deviation and the limits of land to be acquired or used in respect of which no notice to treat has been served under section 11 of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981;
- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on the land; and
- (d) construct any permanent works specified in relation to that land in column (3) of Schedule 7, or any other permanent mitigation works.

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

(3) The Company may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in columns (1) and (2) of Schedule 7 to this Order, 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 7; or
- (b) in the case of land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which compulsory possession of this land was taken unless the Company has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declaration) Act 1981.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the Company shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the Company shall not be required to replace a building removed under this article or restore the land on which any permanent works have been constructed under paragraph 1(d).

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

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

(7) Without prejudice to article 54 (no double recovery), nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5).

(8) The powers of compulsory acquisition of land conferred by this Order shall not apply in relation to the land referred to in paragraph (1)(a)(i) except that the Company shall not be precluded from acquiring new rights over any part of that land under article 25 (new rights etc., only to be acquired in certain lands).

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

(10) Section 13 of the 1965 Act shall apply 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 22(1) (application of Part 1 of the Compulsory Purchase Act 1965).

Temporary use of land for maintenance of works

29.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any of the scheduled works, the Company may—

- (a) enter upon and take temporary possession of any land within the limits of deviation and the limits of land to be acquired or used if such possession is reasonably required for the purpose of maintaining the work or any ancillary works connected with it; 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) shall not authorise the Company 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 the Company shall serve notice of the intended entry on the owners and occupiers of the land.

(4) The Company 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, the Company shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

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

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

(8) Without prejudice to article 54 (no double recovery), nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

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

(10) Section 13 of the 1965 Act shall apply 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 22(1) (application of Part 1 of the Compulsory Purchase Act 1965).

(11) In this article “the maintenance period”, in relation to a scheduled 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

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

- (a) any interest in land; or

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

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

(2) In paragraph (1) “relevant land” means the land acquired from the person concerned or any other land with which 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

31.—(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 shall 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 24 (power to acquire new rights), the tribunal shall 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 shall have 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

32.—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 22 (application of Part 1 of the Compulsory Purchase Act 1965)) in any case where—

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

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

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

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

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

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

the owner shall be required to sell the land subject to the notice to treat.

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

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

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

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

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

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

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

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

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

(9) In any case where by virtue of a determination by the tribunal under this article a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the Company may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and if it does so shall pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

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

33.—(1) Subject to paragraph (6), all private rights of way over land subject to compulsory acquisition under this Order shall be extinguished—

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

whichever is the sooner.

(2) Subject to paragraph (6), all private rights of way over land owned by the Company which, being within the limits of land which may be acquired shown on the deposited plans, is required for the purposes of this Order shall be extinguished on the appropriation of the land for any of those purposes by the Company.

(3) Subject to paragraph (6), all private rights of way over land of which the Company takes temporary possession under this Order shall be suspended and unenforceable for as long as the Company remains in lawful possession of the land.

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

(5) This article does not apply in relation to any right of way to which section 271 or 272 of the 1990 Act (extinguishment of rights of statutory undertakers etc.) or paragraph 2 of Schedule 9 (provisions relating to statutory undertakers etc.) applies.

(6) Paragraphs (1), (2) and (3) shall have effect subject to—

- (a) any notice given by the Company before the completion of the acquisition of the land, the Company's appropriation of it, the Company's entry onto it or the Company's taking temporary possession of it that any or all of those paragraphs shall 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 sub-paragraph (6)(a) and before or after the coming into force of this Order) which makes reference to this article between the Company and the person in or to whom the right of way in question is vested or belongs.

(7) If any such agreement as is mentioned in sub-paragraph (6)(b) 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, it shall be effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

Time limit for exercise of powers of acquisition

34.—(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 shall be served under Part 1 of the 1965 Act as applied to the acquisition of land by article 22 (application of Part 1 of the Compulsory Purchase Act 1965); and
- (b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981(a) as applied by article 23 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The powers conferred by article 28 (temporary use of land for construction of works) shall cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph shall prevent the Company remaining in possession of land after the end of that period, if the land was entered and possession of it was taken before the end of that period.

PART 4

MISCELLANEOUS AND GENERAL

Defence to proceedings in respect of statutory nuisance

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

- (a) that the nuisance relates to premises used by the Company for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to authorised works and that the nuisance is attributable to the carrying out of authorised

(a) 1981 c. 67.
(b) 1990 c. 43.

works which are being carried out in accordance with a notice served under section 60, or a consent given under section 61 or 65, of the Control of Pollution Act 1974(a); or

(b) that the nuisance is a consequence of the operation of the authorised works 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),

shall not apply where the consent relates to the use of premises by the Company 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 are without prejudice to the application to the authorised works of section 122 of the Railways Act 1993(b) (statutory authority as a defence to actions in nuisance, etc.) or any rule of common law having similar effect.

Planning permission and supplementary matters

36.—(1) In relation to the application of paragraph 3(c) of the Second Schedule of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Tree Preservation Order) Regulations 1969(c) (including that paragraph as applied by regulation 3(ii) of the Town and Country Planning (Tree Preservation Order) (Amendment) and (Trees in Conservation Areas) (Exempted Cases) Regulations 1975(d), or as incorporated in any tree preservation order), any direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to works authorised by this Order shall be treated as deeming the permission to have been granted on application made under Part 3 of that Act for the purposes of that Part.

(2) In relation to the application of article 5(1)(d) of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Trees) Regulations 1999(e) as incorporated in any tree preservation order or as having effect by virtue of regulation 10(1)(a) of those Regulations, any direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to works authorised by this Order shall not be treated as an outline planning permission.

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

Power to lop trees overhanging the authorised works

37.—(1) The Company 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 of paragraph (1), the Company shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from the exercise of those powers.

(a) 1974 c. 40.
(b) 1993 c.43.
(c) S.I. 1969/17.
(d) S.I. 1975/148.
(e) S.I. 1999/1892.

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

Common land and public open space

38.—(1) As from—

- (a) the date on which this Order comes into force;
- (b) the date on which each area of special category land is, or, as the case may be, rights over the special category land are, vested in the Company;
- (c) the date on which the exchange land is vested in the Company; or
- (d) the date on which the relevant local authority certifies that the exchange land has been laid out as exchange land to its satisfaction;

whichever is the latest, the exchange land shall vest in the persons in whom the special category land was vested immediately before it was vested in the Company, subject to the equivalent rights, trusts and incidents as attached to the special category land.

(2) On the vesting of the exchange land in accordance with paragraph (1) the special category land shall be discharged from all rights, trusts and incidents to which it was previously subject or, in a case where rights are being acquired over that land, from all such rights, trusts and incidents as are inconsistent with the exercise of those rights.

(3) Nothing in the Metropolitan Commons Supplemental Act 1880(a) shall prevent the Company acquiring, or acquiring rights over, the special category land for the purpose of the authorised works or constructing and maintaining the authorised works within Staines Commons and that Act shall—

- (a) cease to have effect in respect of so much of the special category land as is, or over which rights are, so acquired; and
- (b) not apply to land within Staines Commons which is temporarily occupied or used by the Company in the exercise of the powers conferred by this Order for the purpose of constructing or maintaining the authorised works during the period in which it is so occupied or used.

(4) In this article—

“the special category land” means the common land and public open space land listed in column (1) of Schedule 8 and shown on the deposited plans, which may be acquired compulsorily, or over which rights may be acquired compulsorily, under this Order and for which exchange land is to be provided;

“the exchange land” means in relation to each area of the special category land listed in column (1) of Schedule 8, the corresponding area of land listed in column (2) of Schedule 8, as shown on the deposited plans;

“the relevant local authority” means, in relation to land in Spelthorne Borough, Spelthorne Borough Council and, in relation to land in the London Borough of Hounslow, the London Borough of Hounslow; and

“Staines Commons” means the common regulated by the Metropolitan Commons Supplemental Act 1880.

Authority for statutory undertakers to drive mechanically propelled vehicles

39. It shall be lawful for any statutory undertaker to drive and park any mechanically propelled vehicles over any footpath or bridleway contained within plots 70a, 70b, 76, 78, 79, 79a, 79b, 79c, 81, 81a, 84b, 84c, 85, 86, 87b, 87c, 87d, 88, 89 and 98.

(a) 43 & 44 Vict c. xxxvii.

Power to operate and use railway

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

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

Power to transfer undertaking

41.—(1) The Company may, with the consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) its right to construct, maintain, use or operate the authorised works (or any part of them) and such related statutory rights as may be agreed between the Company and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the Company and the lessee the right to construct, maintain, use or operate the authorised works (or any part of them) and such related statutory rights as may be so agreed.

(2) Where an agreement has been made by virtue of paragraph (1) references in this Order to the Company shall include references to the transferee or the lessee.

(3) The exercise of the powers conferred by any enactment by any person in pursuance of any transfer or grant under paragraph (1) shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those powers were exercised by the Company.

Power to charge fares

42. The Company may demand, take and recover or waive such charges for carrying passengers or goods on the railway comprised in the authorised works, or for any other services or facilities provided in connection with the operation of that railway, as it thinks fit.

Application of landlord and tenant law

43.—(1) This article applies to—

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

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

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

(3) Accordingly, no such enactment or rule of law shall apply 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.

(a) 1993 c. 43. As amended by the Transport Act 2000 (c. 38) and the Railways Act 2005 (c.14).

Obstruction of construction of authorised works

44. Any person who, without reasonable excuse—

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

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

Trespass

45.—(1) Any person who—

- (a) trespasses on any part of the railway; or
- (b) trespasses on any land of the Company in dangerous proximity to the railway or to any electrical or other apparatus used for or in connection with the operation of the railway,

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

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

(3) In this article “the railway” means the railway forming part of the authorised works.

Disclosure of confidential information

46. A person who—

- (a) enters a factory, workshop or workplace in pursuance of the provisions of article 19 (protective works to buildings, roads or apparatus of a statutory undertaker) or article 20 (power to survey and investigate land); and
- (b) discloses to any person any information obtained pursuant to sub-paragraph (a) and relating to any manufacturing process or trade secret,

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

Disapplication and modification of Water Resources Act 1991 provisions

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

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

(3) Where—

- (a) the Company causes loss or damage to another person by the abstraction of water in connection with the exercise of the powers conferred by this Order; and
- (b) the circumstances are such that causing the loss or damage would have constituted breach of the duty under section 48A(1) of the Water Resources Act 1991, but for paragraph (2),

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

(a) 1991 c.57.

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

(5) Section 48A(5) of the Water Resources Act 1991 (prohibition of claims in respect of loss or damage caused by abstraction of water which are not claims under that section) has no application to claims under this article or under Schedule 11 (for the protection of the Environment Agency).

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

Statutory undertakers etc.

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

For the protection of specified undertakers

49. The provisions of Schedule 10 (for the protection of specified undertakers) shall have effect.

For the protection of the Environment Agency

50. The provisions of Schedule 11 (for the protection of the Environment Agency) shall have effect.

For the protection of fuel pipelines

51. The provisions of Schedule 12 (for the protection of fuel pipelines) shall have effect.

Certification of plans etc.

52. The Company shall, as soon as practicable after the making of this Order, submit copies of the book of reference, the deposited sections and the deposited plans to the Secretary of State for certification that they are, respectively, true copies of the book of reference, deposited sections and deposited plans referred to in this Order; and a document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

53.—(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 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 that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

(a) 1978 c. 30.

- (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 shall be 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 shall provide such a copy as soon as reasonably practicable.

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

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

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

(9) This article shall not be taken to exclude the employment of any method of service not expressly provided for by it.

No double recovery

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

Arbitration

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

Signed by the authority of the Secretary of State

Date

Name
Head of the Transport and Works Act Orders Unit
Department for Transport

SCHEDULES

SCHEDULE 1

Article 5

SCHEDULED WORKS

In the County of Surrey, District of Spelthorne—

- Work No. 1 A railway (436 metres in length), commencing at a point 53 metres north of the junction of Cherry Orchard with Gresham Road, passing north-westwards alongside the Staines to Eton Riverside Railway and terminating by a junction with that railway at a point 100 metres south-east of the rail bridge over High Street (Iron Bridge).
- Work No. 1A A footbridge, being a replacement of the existing footbridge on the north-western side of Staines Station, commencing in Station Approach at a point 87 metres north of the junction of Cherry Orchard with Gresham Road and terminating at a point 56 metres south-west of its commencement.
- Work No. 1B A temporary footbridge between Gresham Road and Station Approach commencing at a point 125 metres north of the junction of Cherry Orchard with Gresham Road and terminating at a point 123 metres north-west of that junction.
- Work No. 1C Widening of the existing bridge carrying the Windsor & Eton Riverside Railway over Station Path.
- Work No. 1D A railway (71 metres in length), forming a crossover between the Up and Down lines of the Staines to Windsor and Eton Riverside Railway, commencing at a point 180 metres south of the junction of Kingfisher Drive with Waters Drive and terminating at a point 125 metres south of that junction.
- Work No. 2 A railway (516 metres in length), commencing by a junction with the Staines to Reading Railway at a point 82 metres south-east of the junction of Thames Street with South Street, passing northwards and passing over the existing South Street surface car park on viaduct and terminating by a junction with the Staines to Windsor and Eton Riverside Railway at a point 33 metres east of the junction of South Street with High Street. Work No. 2 includes construction of the viaduct over the South Street surface car park.
- Work No. 2A Realignment of the vehicular entry and exit ramp to Elmsleigh multi-storey car park.
- Work No. 2B Realignment of the turnaround on South Street and the entry and exit road at Elmsleigh surface car park.
- Work No. 2C An access road for maintenance and emergency vehicles, partly in subway, commencing at a point 30 metres south-east of the junction of Westbrook Road with South Street, passing north-eastwards and terminating in the Elmsleigh surface car park 165 metres north-east of its commencement.

In the County of Surrey, District of Spelthorne and in the London Borough of Hillingdon—

- Work No. 3 A railway (4,081 metres in length), commencing by a junction with the Staines to Windsor and Eton Riverside Railway at a point 105 metres east of the junction of Berkeley Close with Moor Lane, passing north-westwards then northwards on a viaduct until chainage 1,245 metres, continuing north-eastwards at grade until chainage 2,520 metres, then passing in two tunnels and terminating at the inside face of the existing Heathrow Express tunnels below Western Perimeter Road. Work No. 3 includes the construction of the viaduct, sub-stations, a ventilation shaft and headhouse buildings.

In the County of Surrey, District of Spelthorne—

- Work No. 3A A footbridge over the Wraysbury River commencing at a point 215 metres south-east of the junction of Berkeley Close with Moor Lane and terminating at a point 45 metres north-east of its commencement.
- Work No. 3B A footbridge over the Staines to Windsor and Eton Riverside Railway commencing at a point 135 metres east of the junction of Berkeley Close with Moor Lane and terminating at a point 55 metres north-west of its commencement.
- Work No. 3C A bridge over the Wraysbury River commencing at a point 107 metres north-east of the junction with Moor Lane and the access to The Willows and terminating at a point 36 metres north of its commencement.
- Work No. 3D An access road, incorporating the existing bridleway (BW50), between the access to the Three Valleys and Thames Water pumping stations and Leylands Lane.

In the London Borough of Hillingdon—

- Work No. 3E An access road commencing at a point 290 metres south-west of the northern end of Bedford Court and terminating 454 metres north-east of its commencement.

In the London Borough of Hounslow—

- Work No. 4 A railway (1, 273 metres in length), commencing by a junction with the Clapham Junction to Staines Railway at a point 10 metres east of the bridge carrying Hounslow Road over the said railway, passing eastwards then north-eastwards and terminating by a junction with the said Clapham Junction to Staines Railway at a point 15 metres south-west of the tunnel carrying the River Crane beneath the said railway.
- Work No. 4A An access road commencing at a point 85 metres north-west of the western end of Gloucester Road and terminating by a junction with Godfrey Way at a point 70 metres north-east of the junction of Corfe Close with Carisbrooke Close.
- Work No. 4B A railway (48 metres in length), forming a crossover between Work No. 4 and the Down line of the Clapham Junction to Staines Railway, commencing at a point 80 metres west of the Harlington Road East road bridge and terminating at a point 48 metres east of its commencement.
- Work No. 4C A railway forming a crossover between the Down and Up lines of the Clapham Junction to Staines Railway commencing at a point 272 metres north-west of the western end of Corfe Close terminating at a point 71 metres east of its termination.
- Work No. 4D An access road to the Royal Mail depot commencing at a point 54 metres north-west of the western end of Corfe Close and terminating by a junction with Godfrey Way 160 metres east of its commencement.

SCHEDULE 2

Articles 5 and 21

ACQUISITION OF CERTAIN LANDS FOR ANCILLARY WORKS

<i>(1)</i> Area	<i>(2)</i> Number of land shown on land plan	<i>(3)</i> Purpose for which land may be acquired
County of Surrey, District of Spelthorne	2	Working site, provision of new station building and alteration to station forecourt
	3, 4	Provision of new station building and alteration to proposed footbridge
	11	Alteration to existing railway
	19	Alteration to existing railway
	20, 21, 22	Working site and subsequently remodelling of car park and provision of access
	28	Alteration to highway layout
	29	Alteration to Westbrook Road and provision of access
	36	Alteration to existing railway
	48	Working site, provision of noise barriers and removal of pedestrian level crossing
	49, 51	Working site and provision of footpath on that land
	60	Working site, alteration to existing railway and provision of footpath on that land
	65	Alteration to existing railway
	71	Working site, mitigation and flood compensation
71a, 71b, 71c, 71d, 73, 74	Working site, flood compensation and subsequently provision of exchange land	
83a	Working site and diversion of	

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on land plan</i>	<i>(3)</i> <i>Purpose for which land may be acquired</i>
		utility apparatus
	87a	Working site and subsequently provision of exchange land
	87b	Working site, diversion of utility apparatus and provision of footpath on that land
	87c	Working site, diversion of utility apparatus and provision of footpath on that land
	87d	Working site, diversion of utility apparatus and provision of footpath and access track on that land
County of Surrey, District of Runnymede	1	Alteration to existing railway
London Borough of Hillingdon	15c	Access, working site and flood compensation
	23, 24, 25, 26	Working site and flood compensation
London Borough of Hounslow	2, 3	Works to bridge
	4, 5	Works to bridge
	6d	Working site and provision of exchange land
	10	Landscaping
	11	Landscaping
	11a	Landscaping, provision of footpath on that land and provision of exchange land
	11b	Provision of footpath on that land and provision of exchange land
	13	Alteration to existing railway

SCHEDULE 3

Article 9

STREETS TO BE STOPPED UP

PART 1

STREETS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> Area	<i>(2)</i> Street to be stopped up	<i>(3)</i> Extent of stopping up	<i>(4)</i> New street to be substituted
County of Surrey, District of Spelthorne	Possible right of way between Gresham Road and Station Approach	Between points A1, B1 and C1 and between points B1, D1 and E1 (over existing footbridge)	Temporarily, Work No. 1B Permanently, Work No. 1A
	Cycle track adjacent to Station Path	Between points F1 and G1	Cycle track between points G1, H1 and F1
	Turnaround on eastern side of South Street	Between points P1 and P2	Work No. 2B
	Footpath FP 17	Between points L4 and N4	Footpath between points C3, A4, C4, F4 and E4
	Possible right of way between Moor Lane and Footpath FP 19	Between points Q4 and E5	Footpath between points C3, A4, C4, F4 and E4
	Footpath FP 19	Between points H5, F5 and D5	Footpath between points C3, A4, C4, F4 and E4
	Footpath FP 16	Between points F5 and G5	Footpath between points C3, A4, C4, F4 and E4
	Footpath FP 14	Between points B5, D5 and F5	Footpath between points C3, A4, C4, F4 and E4
London Borough of Hounslow	Possible right of way between Godfrey Way and River Crane	Between points A13 and B13	Work No. 4A

PART 2

STREET FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> Area	<i>(2)</i> Street to be stopped up	<i>(3)</i> Extent of stopping up
County of Surrey, District of Spelthorne	Matthews Lane	At (but not between) points P3 and P4 (for construction of bridge extension footings)

SCHEDULE 4

Article 10

STREETS TO BE TEMPORARILY STOPPED UP

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
County of Surrey, District of Spelthorne	Cycle track adjacent to Station Path	Between points G1 and I1 and points J1 and K1
	Footway on north-eastern side of Gresham Road	Within the limits of deviation
	South Street	Between points T1 and T2
	Westbrook Road	Within the limits of deviation and limits of land to be acquired or used
	Matthews Lane	Within the limits of deviation
	Possible right of way north of former Staines to Windsor and Eton Riverside Railway	Between points B4, C4 and D4
	Footpath FP 18	Between points G4 and H4 and points J4 and K4
	Footpath FP 17	Between points K4 and L4
	Bridleway BW50	Between points M4, E5 and A9
	Possible right of way between Moor Lane and footpath FP 19	Between points P4 and Q4
	Footpath FP 14	Between points B5 and C5
	Footpath FP 19	Between points A5 and H5
London Borough of Hillingdon	Stanwell Moor Road	Between points T1 and T2
London Borough of Hounslow	Possible right of way adjacent to River Crane	Between points A12 and B12, B12 and C12, C12 and A12 and C12 and A13
	Possible right of way between Godfrey Way and River Crane	Between points A13, B13 and C13

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 shall 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 and in the case of the imposition of a restrictive covenant, as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without prejudice to the generality of paragraph 1, the Land Compensation Act 1973(a) shall have 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 the words “land is acquired or taken” there shall be substituted the words “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for the words “acquired or taken from him” there shall be substituted the words “over which the right is exercisable or the restrictive covenant enforceable”.

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

- (a) for the word “part” in paragraphs (a) and (b) there shall be substituted the words “a right over or restrictive covenant affecting land consisting”;
- (b) for the word “severance” there shall be substituted the words “right or restrictive covenant over or affecting the whole of the house, building or manufactory or of the house and the park or garden”;
- (c) for the words “part proposed” there shall be substituted the words “right or restrictive covenant proposed”; and
- (d) for the words “part is” there shall be substituted the words “right or restrictive covenant is”.

Application of the 1965 Act

3.—(1) The 1965 Act shall have 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, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are 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 the restrictive covenant imposed or to be imposed;
or
- (b) the land over which the right is or is to be exercisable or the restrictive covenant is or is to be enforceable.

(2) Without prejudice to the generality of sub-paragraph (1), Part 1 of the 1965 Act shall apply in relation to the compulsory acquisition under this Order of a right by the creation of a new right, or in relation to the imposition of a restrictive covenant, with the modifications specified in the following provisions of this Schedule.

4. For section 7 of the 1965 Act (measure of compensation) there shall be substituted the following section—

(a) 1973 c.26.

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard shall be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the restrictive covenant 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 of the 1965 Act (provisions as to divided land) there shall be substituted the following section—

“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, or a restrictive covenant affecting, land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

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

the [Heathrow Airtrack] Order 200[(a) (“the Order”) shall, in relation to that person, cease to authorise the purchase of the right or the imposition of a restrictive covenant and be 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 shall be 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);

(a) S.I. 200[X] ().

shall be so modified 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 or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

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

8. Section 20 of the 1965 Act (protection for interests of tenants at will, etc.) shall apply 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 or the enforcement of the restrictive covenant in question.

9. Section 22 of the 1965 Act (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) shall be so modified 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 or to enforce the restrictive covenant imposed, subject to compliance with that section as respects compensation.

SCHEDULE 6

Article 25

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 deposited plans</i>
County of Surrey, District of Spelthorne	1, 37, 38, 39, 70b, 76, 79a, 79b, 79c, 81, 81a, 84c, 85, 92
London Borough of Hillingdon	13
London Borough of Hounslow	8, 9, 17
London Borough of Richmond Upon Thames	1

SCHEDULE 7

Article 28

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> Area	<i>(2)</i> Number of land shown on deposited plans	<i>(3)</i> Purpose for which temporary possession may be taken	<i>(4)</i> Authorised work
County of Surrey, District of Spelthorne	5	Working site	Work No. 1
	14	Working site and permanent provision of cycle track between points G1 and H1	Work No. 1
	15	Working site	Works Nos. 1, 2, 2A, 2B and 2C
	33, 34, 35	Working site	Works Nos. 2 and 2C
	40, 41	Working site, access and temporary remodelling of car parks	Work No. 2A
	45	Working site and access	Works Nos. 1 and 2
	52, 53, 55	Working site and provision of footpath on that land	Work No. 3A
	57	Working site	Work No. 3A
	61, 62, 63	Working site and access	Works Nos. 3A and 3B
	67, 68	Working site	Works Nos. 3 and 3B
	70	Working site and provision of footpath on that land	Work No. 3B
	70a	Working site and access and provision of footpath on that land	Work No. 3
	70b	Working site, diversion of utility	Work No. 3

<i>(1) Area</i>	<i>(2) Number of land shown on deposited plans</i>	<i>(3) Purpose for which temporary possession may be taken</i>	<i>(4) Authorised work</i>
		apparatus and provision of footpath on that land	
	75	Environmental mitigation and temporary planting	Work No. 3
	76	Working site and access	Work No. 3
	77	Working site	Work No. 3
	79	Working site and access	Work No. 3
	79a	Working site and access and provision of footpath on that land	Work No. 3
	79b, 79c	Working site and access, diversion of utility apparatus and provision of footpath on that land	Work No. 3
	81, 81a	Diversion of utility apparatus	Work No. 3
	83	Access, working site and provision of temporary footpath on that land	Work No. 3
	83b	Working site and access	Work No. 3
	84c	Working site, diversion of utility apparatus and provision of footpath on that land	Work No. 3
	85	Diversion of utility apparatus	Work No. 3
	87	Working site	Work No. 3

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on deposited plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Authorised work</i>
London Borough of Hillingdon	92	Working site, access and provision of replacement pond on that land	Work No. 3
	93	Working site	Work No. 3
	97	Working site	Work No. 3
	13, 14, 15, 16	Working site	Work No. 3
	13a, 15a, 15b	Access	Work No. 3
London Borough of Hounslow	22	Access	Work No. 3
	7	Working site	Works Nos. 4, 4A and 4B

SCHEDULE 8

Article 38

COMMON LAND AND PUBLIC OPEN SPACE

<i>(1)</i> <i>Number of special category land shown on deposited plans</i>	<i>(2)</i> <i>Number of exchange land shown on deposited plans</i>
In the County of Surrey, District of Spelthorne 66, 66a 70b, 82 78, 78a, 79a, 79b, 79c 78b 83a, 84, 87b 80, 84a, 84c	71a 71b 73, 71c 71d 87a 74
In the London Borough of Hounslow 6a 6c	6d 11a, 11b

PROVISIONS RELATING TO STATUTORY UNDERTAKERS ETC.

Apparatus of statutory undertakers etc. on land acquired

1.—(1) Sections 271 to 274 of the 1990 Act (power to extinguish rights of statutory undertakers etc. and power of statutory undertakers etc. to remove or re-site apparatus) shall apply in relation to any land acquired or appropriated by the Company under this Order subject to the following provisions of this paragraph: 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, which provide for the payment of compensation) shall have effect accordingly.

(2) In the provisions of the 1990 Act, as applied by sub-paragraph (1), references to the appropriate Minister are references to the Secretary of State.

(3) Where any apparatus of public utility undertakers 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 sub-paragraph (1), any person who is the owner or occupier of premises to which a supply was given from that apparatus shall be entitled to recover from the Company 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.

(4) Sub-paragraph (3) shall 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,

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

(5) The provisions of the 1990 Act mentioned in sub-paragraph (1), as applied by that sub-paragraph, shall not have effect in relation to apparatus as respects which paragraph 2 or Part 3 of the 1991 Act applies.

(6) In this paragraph—

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

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

Apparatus of statutory undertakers etc. in stopped up streets

2.—(1) Where a street is stopped up under article 9 (stopping up of streets) any statutory utility whose apparatus is under, in, upon, along or across the street shall have the same powers and rights in respect of that apparatus, subject to the provisions of this paragraph, as if this Order had not been made.

(2) Where a street is stopped up under article 9 any statutory utility whose apparatus is under, in, upon, over, along or across the street may, and if reasonably requested to do so by the Company shall—

(a) 2003 c. 21.

(b) 1980 c. 66.

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

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

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

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

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

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

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall 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 shall be treated as if it also had been agreed or had been so determined.

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

(7) Sub-paragraphs (3) to (6) shall not apply where the authorised works constitute major transport works for the purposes of Part 3 of the 1991 Act, but instead—

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

(8) In this paragraph—

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

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

“statutory utility” means a statutory undertaker for the purposes of the Highways Act 1980 or a public communications provider as defined in paragraph 1(6).

FOR THE PROTECTION OF SPECIFIED UNDERTAKERS

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

(2) The provisions of Schedule 9 (provisions relating to statutory undertakers, etc.), in so far as they relate to the removal of apparatus, shall not apply in relation to apparatus to which this Schedule applies.

2. 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, any 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(b); 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(c);
- (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,

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.

3. This Schedule does not apply to apparatus in respect of which the relations between the Company and the undertaker are regulated by the provisions of Part 3 of the 1991 Act.

(a) 1989 c. 29.

(b) 1991 c. 56.

(c) 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).

4. Regardless of any provision in this Order or anything shown on the land plans the Company shall not acquire any apparatus other than by agreement.

5.—(1) If, in the exercise of the powers conferred by this Order, the Company acquires any interest in any land in which any apparatus is placed, that apparatus shall not be removed under this Schedule and any right of an undertaker to maintain that apparatus in that land shall 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 Company requires the removal of any apparatus placed in that land, it shall 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 Company shall, 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 Company and for the subsequent 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 Company, or the Company 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 shall, on receipt of a written notice to that effect from the Company, 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 Company under this Schedule shall be constructed in such manner and in such line or situation as may be agreed between the undertaker in question and the Company or in default of agreement settled by arbitration in accordance with article 55 (arbitration).

(5) The undertaker in question shall, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 55, and after the grant to the undertaker of any such facilities and rights as are referred to in sub-paragraphs (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 Company to be removed under the provisions of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the Company gives notice in writing to the undertaker in question that it desires itself to execute any work to which this sub-paragraph applies, that work, instead of being executed by the undertaker, shall be executed by the Company without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the undertaker.

(7) Sub-paragraph (6) applies to any part of any work necessary in connection with construction of alternative apparatus, or the removal of apparatus required to be removed, as will take place in any land of the Company.

(8) Nothing in sub-paragraph (6) shall authorise the Company 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 Company affords to an undertaker facilities and rights for the construction and maintenance in land of the Company of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the Company and the undertaker in question or in default of agreement settled by arbitration in accordance with article 55 (arbitration).

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

- (a) give effect to all reasonable requirements of the Company for ensuring the safety and efficient operation of the railway of the Company 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 Company or the traffic on the railway; 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 railway for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by the Company 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 shall make such provision for the payment of compensation by the Company 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 Company under paragraph 5(2), the Company shall submit to the undertaker in question a plan, section and description of the works to be executed.

(2) Those works shall 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 an officer of the undertaker shall be entitled to watch and inspect the execution of those works.

(3) Any requirements made by the undertaker under sub-paragraph (2) shall 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 Company, reasonably requires the removal of any apparatus and gives written notice to the Company of that requirement, paragraphs 1 to 6 shall apply as if the removal of the apparatus had been required by the Company under paragraph 5(2).

(5) Nothing in this paragraph shall preclude the Company 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 shall apply to and in respect of the new plan, section and description.

(6) The Company shall not be required to comply with sub-paragraph (1) in a case of emergency but in that case it shall 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 shall 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 Company shall repay to an undertaker the reasonable expenses incurred by that undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 5(2).

(2) There shall be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule, 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, and the placing of apparatus of that type or capacity or those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the Company or, in default of agreement, is not determined by arbitration in accordance with article 55 (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 paragraph would be payable to the undertaker in question by virtue of sub-paragraph (1), shall 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 shall not be treated as 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 shall 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) shall, 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 normal 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 of the 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 Company shall—

- (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) shall impose any liability on the Company with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an undertaker, its officers, servants, contractors or agents.

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

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

1.—(1) The following provisions shall apply for the protection of the Agency unless otherwise agreed in writing between the Company and the Agency.

(2) In this Schedule—

“the Agency” means the Environment Agency;

“construction” includes execution, placing, altering, replacing, relaying and removal and “construct” and “constructed” shall be 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 any waters 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) 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

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

2.—(1) Before beginning to construct any specified work, the Company shall 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 shall 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) shall not be unreasonably withheld or delayed;
- (b) shall be 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 shall 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 prejudice to the generality of paragraph 2, the requirements which the Agency may make under that paragraph include conditions requiring the Company 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, shall be constructed—

- (a) with all reasonable despatch 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 the Agency shall be entitled by its officer to watch and inspect the construction of such works.

(2) The Company shall 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 Company at the Company's own expense to comply with the requirements of this Schedule or (if the Company 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 Company, 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 shall be recoverable from the Company.

(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 shall not except in 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 Company shall 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 Company 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 Company is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the Company to repair and restore the work, or any part of such work, or (if the Company 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 Company, the Company 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 Company.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency shall 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 shall be made good by the Company to the reasonable satisfaction of the Agency and if the Company fails to do so, the Agency may make good the same and recover from the Company the expense reasonably incurred by it in so doing.

7.—(1) The Company shall 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 Company 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 Company fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and may recover from the Company 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 Company the reasonable cost of so doing provided that notice specifying those steps is served on the Company 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) shall authorise the Agency to execute works on or affecting an operational railway forming part of the Company's network without the prior consent in writing of the Company such consent not to be unreasonably withheld or delayed.

9. The Company shall 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 Schedule;
- (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 prejudice to the other provisions of this Schedule, the Company shall indemnify the Agency from 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 Company, its contractors, agents or employees whilst engaged upon the work.

(2) The Agency shall give to the Company reasonable notice of any such claim or demand and no settlement or compromise shall be made without the agreement of the Company which agreement shall not be unreasonably withheld or delayed.

11. The fact that any work or thing has been executed or done by the Company 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, shall not relieve the Company from any liability under the provisions of this Schedule.

12. For the purposes of Chapter 2 of Part 2 of the Water Resources Act 1991^(a) (abstraction and impounding of water) and section 109 of that Act (as to structures in, over or under watercourses) 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 shall be 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 or, as the case may be, a consent or approval under section 109.

13. Any dispute arising between the Company and the Agency under this Schedule shall, if the parties agree, be determined by arbitration under article 55 (arbitration), but shall otherwise 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 Company or the Agency, after notice in writing by one to the other.

(a) 1991 c. 57.

FOR THE PROTECTION OF FUEL PIPELINES

1. The following provisions of this Schedule shall have effect, unless otherwise agreed in writing, between the Company and the British Pipelines Agency (“BPA”).

2.—(1) Except in the case of trial holes or alterations, not less than 5 months before starting to construct the authorised works the Company shall provide to the BPA a programme for the authorised works and a general indication of the nature and location of those works and, if within 28 days from the receipt by the BPA of that programme and general indication the BPA gives notice in writing to the Company that any part of the authorised works indicated in the programme may in any way affect the Stanlow to Gatwick pipeline (“the pipeline”), paragraphs 3 and 4 shall apply with respect to that part of the authorised works.

(2) Upon giving notice to the Company under sub-paragraph (1), the BPA shall provide drawings showing to the best of its knowledge the position and depth of the relevant part of the pipeline.

(3) The Company shall not acquire the pipeline.

3. Not less than 3 months before commencing to construct the authorised works or not less than 1 month before digging trial holes or making alterations to the authorised works which in either case may significantly affect the pipeline, the Company shall provide to the BPA plans (together with a programme of the works in the case of trial holes or alteration) and shall have due regard to any representations made by the BPA relating to such plans or to the programme for the works.

4.—(1) At any time within a period of 1 month, or a period of 14 days in the case of trial holes or alterations, from the receipt by the BPA of the plans referred to in paragraph 3 the BPA may by notice in writing to the Company specify any reasonable temporary or permanent works or measures (the “protective works”) which in its reasonable opinion should be carried out or taken by the Company before the commencement of or during the construction of the authorised works in order to ensure the stability of the pipeline (shown on the drawings provided by the BPA under paragraph 2(2)) or to protect the pipelines from injury (including injury by subsidence) and such protective works shall be constructed by the Company at its own expense and under the inspection (if any) of the BPA.

(2) Except in the case of protective works that the BPA has informed the Company in writing should be carried out during the construction of the works, the Company shall not commence the construction of any work within 15 metres of, or which may in any way affect, the pipeline until the protective works relating to the work have been completed to the reasonable satisfaction of the BPA.

(3) In the case of protective works of which the BPA has informed the Company in writing as mentioned in sub-paragraph (2), the Company shall comply with all reasonable requirements of the BPA arising from its inspection under sub-paragraph (1) as promptly as practicable after the Company has been notified of such requirements.

(4) Except in an emergency (when it shall give such notice as may be reasonably practicable) the Company shall give the BPA not less than 14 days' notice of its intention to carry out any works for the repair or maintenance of the protective works in so far as such works may affect or interfere with the pipeline.

5.—(1) The Company shall from time to time supply the BPA with all such information as the BPA may reasonably require in relation to operations relating to or connected with the authorised works which may interfere with any measures to which this sub-paragraph applies.

(2) Sub-paragraph (1) applies to measures for providing or preserving cathodic protection for apparatus forming part of the pipeline which have been taken by the BPA or upon which the BPA has consulted the Company.

6.—(1) The Company shall repay to the BPA the reasonable expenses incurred by the BPA in or in connection with the preparation of any drawing or notice referred to in paragraph 2(2) or 4(1) and by the BPA in the watching and inspecting of—

- (a) any protective works relating to the pipeline; and
- (b) any of the authorised works (including maintenance works) which are near to or are likely to affect the pipeline.

7.—(1) If by reason or in consequence of any specified matter any damage, disruption or interference to the pipeline or the operation or use of it shall be caused or the BPA shall carry out any works, take any measures or install any ancillary apparatus (other than additional cathodic protection) which may be reasonably necessary to prevent any such damage, disruption or interference occurring—

- (a) the Company shall pay reasonable compensation to the BPA for any loss sustained or additional expense incurred; and
- (b) the Company shall indemnify the BPA against all claims, demands, proceedings, costs, damages and expenses which may be made, taken against or recovered from or incurred by the BPA by reason or in consequence of any specified matter.

(2) Nothing in this paragraph shall impose any liability on the Company in respect of so much of any damage, loss or additional expenditure as is attributable to—

- (a) the act, neglect or default of the BPA or any employees or contractors of the BPA, such act, neglect or default to include, without prejudice to the generality of that expression, any failure to show upon the drawings provided under paragraph 2(2) to the best of the BPA's knowledge the position and depth of the relevant part of the pipeline with sufficient accuracy to have enabled the Company by taking reasonable precautions to avoid damage or loss or the need for additional expenditure in respect of those systems; or
- (b) any work or operation carried out by or on behalf of the Company in accordance with the instructions of the BPA and without negligence.

(3) The BPA shall give to the Company reasonable notice of any claim or demand to which sub-paragraph (1)(a) applies and no settlement or compromise of it shall be made without the prior consent in writing of the Company, such consent not to be unreasonably withheld or delayed.

8. In this Schedule—

“specified matter” means any of the following—

- (a) the construction, maintenance, operation or use of the authorised works;
- (b) the construction, maintenance, operation or use of any protective works;
- (c) any preparatory action in connection with any activity mentioned in sub-paragraph (a) or (b);
- (d) any subsidence resulting from, or failure or want of repair of any such works as are mentioned in sub-paragraph (a) or (b); and
- (e) any act or omission of the Company or of any person in its employ or of its agents or contractors whilst engaged upon the construction, maintenance, operation or use of any such works as are mentioned in sub-paragraph (a) or (b) or any preparatory action mentioned in sub-paragraph (c).

EXPLANATORY NOTE

(This note is not part of the Order)

The Order authorises Heathrow Airport Limited to construct and operate a new railway and associated works between Heathrow Airport and Staines together with depot facilities at Feltham in order to enable direct rail services to run between Heathrow Airport and Guildford, Reading and London Waterloo. The Order authorises the acquisition and use of land for this purpose and confers authorising powers in connection with the construction and operation of the railway.

Copies of the plans and sections are available for inspection at [].

STATUTORY INSTRUMENTS

200[] No. []

**TRANSPORT AND WORKS, ENGLAND TRANSPORT,
ENGLAND**

The Heathrow Airtrack Order 200[]

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