

201[x] No [xx]

**TRANSPORT AND WORKS, ENGLAND**

**TRANSPORT, ENGLAND**

The Network Rail (Chart Leacon) Order 201[x]

*Made* - - - -

\*\*\*

*Coming into force*

- -

\*\*\*

**CONTENTS**

**PART 1**

**PRELIMINARY**

1. Citation and Commencement
2. Interpretation

**PART 2**

**ACQUISITION AND POSSESSION OF LAND**

*Powers of acquisition*

3. Power to acquire land
4. Application of Part 1 of the 1965 Act
5. Application of the 1981 Act
6. Power to acquire new rights
7. Power to acquire subsoil only

*Temporary Possession of Land*

8. Temporary possession of land

*Compensation*

9. Disregard of certain interests and improvements
10. Set-off for enhancement in value of retained land

*Supplementary*

11. Extinction or suspension of private rights of way
12. Time limit for exercise of powers of acquisition

**PART 3**

**MISCELLANEOUS AND GENERAL**

*Streets*

13. Street to be stopped up

*Miscellaneous and General*

14. Power to survey and investigate land

15. Disclosure of confidential information
16. Statutory undertakers, etc.
17. Certification of plans etc.
18. Service of notices
19. No double recovery
20. Arbitration

---

## SCHEDULES

- SCHEDULE 1 — MODIFICATION OF COMPENSATION AND  
COMPULSORY PURCHASE ENACTMENTS FOR  
CREATION OF NEW RIGHTS
- SCHEDULE 2 — LAND OF WHICH TEMPORARY POSSESSION MAY BE  
TAKEN
- SCHEDULE 3 — LAND IN WHICH ONLY NEW RIGHTS MAY BE  
ACQUIRED
- SCHEDULE 4 — STREET TO BE STOPPED UP
- SCHEDULE 5 — PROVISIONS RELATING TO STATUTORY  
UNDERTAKERS, ETC.
- PART 1 — APPARATUS OF STATUTORY UNDERTAKERS, ETC. ON  
    LAND ACQUIRED
- PART 2 — APPARATUS OF STATUTORY UNDERTAKERS, ETC. IN  
    STOPPED UP STREETS
- SCHEDULE 6 — PROTECTIVE PROVISIONS
- PART 1 — FOR THE PROTECTION OF ELECTRICITY, GAS, WATER  
    AND SEWERAGE UNDERTAKERS
- PART 2 — FOR THE PROTECTION OF ELECTRONIC GAS COMMUNICATIONS  
    CODE NETWORKS

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[Objections to that application have been withdrawn.]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[The Secretary of State, having considered [the objections made and not withdrawn] [and the report of the person who held the inquiry], has determined to make an Order giving effect to the [proposals comprised in the application [without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

---

(a) S.I. 2006/1466, as amended by S.I. 2010/439, S.I. 2011/2085, S.I. 2012/147, S.I. 2012/1658, S.I. 2012/2590 and S.I. 2013/755 and 2017/1070.

(b) 1992 c. 42. Section 1 was amended by the Planning Act 2008 (c. 29) Schedule 2, paragraphs 51 and 52; section 5 was amended by S.I. 2012/1659.

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 under 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 [X] 201[X].

The Secretary of State, in exercise of the powers conferred by sections 1 and 5 of, and paragraphs [3 – 5, 10, 1, 16 and 17] Schedule 1 to, the 1992 Act makes the following Order—

## PART 1

### PRELIMINARY

#### **Citation and Commencement**

**1.** This Order may be cited as the Network Rail (Chart Leacon) Order 201[X] and comes into force on [xxx].

#### **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 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(**c**);

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

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

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

“authorised works” means the works authorised by the planning permission and any associated or similar works authorised by the Town and Country Planning (General Permitted Development) (England) Order 2015(**f**);

“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(**g**);

“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;

---

(a) 1961 c.33.  
(b) 1965 c.56.  
(c) 1980 c.66.  
(d) 1990 c.8.  
(e) 1991 c.22.  
(f) S.I. 2015/96  
(g) 1980 c.66.

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

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

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

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

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

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

“the planning permission” means the planning permission granted under the 1990 Act reference [\*] dated [\*] from Ashford Borough Council comprising a light maintenance depot facility and any variation or replacement of that planning permission;

“street” has the meaning given in section 48 (streets, street works and undertakers) of the 1991 Act and “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;

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

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

“the undertaking” means the railway undertaking of Network Rail as from time to time existing.

(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 measurements stated in any description of land in the book of reference are approximate.

(4) References in this Order to numbered plots are references to plot numbers shown on the land plan.

(5) References in this Order to hatched land are references to land shown hatched on the stopping up plan.

## PART 2

### ACQUISITION AND POSSESSION OF LAND

#### *Powers of acquisition*

#### **Power to acquire land**

**3.—**(1) Network Rail may acquire compulsorily so much of the land shown on the land plan and described in the book of reference as may be required for the purposes of the authorised works or their maintenance and may use any land so acquired for those purposes or for any other purposes ancillary to its undertaking.

(2) This article is subject to article 6 (power to acquire new rights) and article 8 (temporary possession of land).

---

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

## Application of Part 1 of the 1965 Act

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

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

(2) In its application by virtue of paragraph (1), Part 1 of the 1965 Act has effect with the following modifications.

(3) Omit section 4 (which provides a time limit for compulsory purchase of land).

(4) In section 4A(1)(b) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4”, substitute “section 22 of the Transport and Works Act 1992 (validity of orders under section 1 or 3), the five year period mentioned in article 12 (time limit for exercise of powers of acquisition) of the Network Rail (Chart Leacon) Order 201[X](c)”.

(5) In section 11(1B)(d) (powers of entry), in a case where the notice to treat relates only to the acquisition of an easement or other right over land, for “3 months” substitute “1 month”.

(6) In section 11A(e) (powers of entry: further notices of entry)—

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

(7) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 12 (time limit for exercise of powers of acquisition) of the Network Rail (Chart Leacon) Order 201[x]”.

(8) In Schedule 2A(f) (counter-notice requiring purchase of land not in notice to treat)—

- (a) omit paragraphs 1(2) and 14(2); and
- (b) after paragraph 29, insert—

## “PART 4

### INTERPRETATION

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under article 8 (temporary possession of land) of the Network Rail (Chart Leacon) Order 201[X].”

## Application of the 1981 Act

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

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

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

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

(5) In section 5B(1)(a) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase

---

(a) 1981 c. 67.

(b) As inserted by section 202(1) of Housing and Planning Act 2016 (c.22).

(c) S.1 201[ ]/XXX.

(d) Subsection (1B) of section 11 was inserted by section 186(1) and (2)(b) of the Housing and Planning Act 2016.

(e) As inserted by section 186(3) of the Housing and Planning Act 2016 (c.22).

(f) As inserted by section 199(1) of, and paragraphs 1 and 3 of Schedule 17 to, the Housing and Planning Act 2016.

(g) As inserted by section 182(2) of the Housing and Planning Act 2016 (c.22).

order), the three year period mentioned in section 5A” substitute “section 22 of the Transport and Works Act 1992 (validity of orders under section 1 or 3), the five year period mentioned in article 12 (time limit for exercise of powers of acquisition) of the Network Rail (Chart Leacon) Order 201[x]”.

(6) In section 6**(b)** (notices after execution of declaration), in subsection (1)(b) for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 14A(c) of the Transport and Works Act 1992”.

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

(8) In Schedule A1**(e)** (counter-notice requiring purchase of land not in general vesting declaration), omit paragraph 1(2).

(9) References to the 1965 Act are to be construed as references to that Act as applied to the acquisition of land by article 4 (application of Part 1 of the 1965 Act).

### **Power to acquire new rights**

**6.**—(1) Network Rail may acquire compulsorily such easements or other rights over any land referred to in paragraph (1) of article 3 (power to acquire land) as may be required for any purpose for which that land may be acquired under that provision, by creating them as well as by acquiring easements or other rights already in existence.

(2) In the case of the land specified in columns (1) and (2) of Schedule 3 (land in which only new rights may be acquired) Network Rail's powers of compulsory acquisition are limited to the acquisition of such new rights as may be required for the purpose specified in relation to that land in column (3) of that Schedule.

(3) Subject to Schedule 2A (counter-notice requiring purchase of land not in notice to treat) of the 1965 Act (as substituted by paragraph 5(8) of Schedule 1 (modification of compensation and compulsory purchase enactments for creation of new rights)) where Network Rail acquires a right over land under paragraph (1) Network Rail is not required to acquire a greater interest in that land.

(4) Schedule 1 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right.

### **Power to acquire subsoil only**

**7.**—(1) Network Rail may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 3(1) (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 Network Rail acquires any part of, or rights in, the subsoil of land under paragraph (1) Network Rail is not required to acquire an interest in any other part of the land.

---

(a) As inserted by section 202(2) of the Housing and Planning Act 2016 (c.22).

(b) As amended by paragraph 52(2) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c. 11) and paragraph 7 of Schedule 15 to the Housing and Planning Act 2016 (c. 22).

(c) Inserted by S.I. 2017/16.

(d) As amended by paragraph 3 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

(e) As inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

## *Temporary Possession of Land*

### **Temporary possession of land**

**8.**—(1) Network Rail may, in connection with the carrying out of the authorised works, enter upon and take temporary possession of the land specified in columns (1) and (2) of Schedule 2 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule and may, in connection with the carrying out of the authorised works—

- (a) remove any buildings, materials (including any waste material) and vegetation from that land; and
- (b) construct temporary works (including the provision of means of access) and buildings on that land.

(2) Subject to paragraph (11), Network Rail may, in connection with the carrying out of the authorised works, enter upon and take possession of any other land within the Order limits in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4(a) (execution of declaration) of the 1981 Act and may, in connection with the carrying out of the authorised works—

- (a) remove any buildings, materials (including any waste material) and vegetation from that land;
- (b) construct temporary works (including the provision of means of access) and buildings on that land; and
- (c) construct any permanent works comprising part of the authorised works.

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

(4) Network Rail 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 paragraph (1) 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 (3) of Schedule 2; or
- (b) in the case of land referred to in paragraph (2), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless Network Rail has, before the end of that period, served a notice of entry under section 11(1)(b) of the 1965 Act or made a declaration under section 4 of the 1981 Act.

(5) Before giving up possession of land of which temporary possession has been taken under this article, Network Rail must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land, but Network Rail is not required to—

- (a) replace a building or materials removed in connection with the carrying out of the authorised works under this article; or
- (b) restore the land on which any works have been constructed under paragraph (2)(c).

---

(a) Section 4 was amended by section 184 and 185 of, and paragraph 1 and 2 of Schedule 18 to, the Housing and Planning Act 2016 (c. 22).

(b) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.

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

(7) Any dispute as to 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 affecting article 19 (no double recovery), nothing in this article shall affect any liability to pay compensation under section 10(2)(a) (further provision as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5).

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

(10) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 4(1) (application of Part 1 of 1965 Act).

(11) Paragraph (2) does not authorise Network Rail to take temporary possession of any land which it is not authorised to acquire under article 3(1) (power to acquire land) or any land specified in Schedule 3 (land in which only new rights etc. may be acquired).

### *Compensation*

#### **Disregard of certain interests and improvements**

**9.**—(1) In assessing the compensation payable to any person on the acquisition from that person of any land under this Order, the tribunal is not to 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 the 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 he is, or was at the time when the building was erected, the works executed or the improvement or alteration made, directly or indirectly concerned.

#### **Set-off for enhancement in value of retained land**

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

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 6 (power to acquire new rights), the tribunal is to 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,

---

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

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

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

### *Supplementary*

#### **Extinction or suspension of private rights of way**

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

whichever is the sooner.

(2) Subject to paragraph (6), all private rights of way over land owned by Network Rail which, being within the Order limits, are required for the purposes of the authorised works, are extinguished on the appropriation of the land for any of those purposes by Network Rail.

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

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

whichever is the sooner.

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

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

(6) This article does not apply in relation to any right of way to which section 271 or 272 (extinguishment of rights of statutory undertakers, etc.) of the 1990 Act or paragraph 1 of Part 1 of Schedule 5 (provisions relating to statutory undertakers, etc.) to this Order applies.

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

- (a) any notice given by Network Rail before the completion of the acquisition of the land, Network Rail's appropriation of it, Network Rail's entry onto it or Network Rail's taking temporary possession of it that any or all of those paragraphs do not apply to any right of way specified in the notice; and
- (b) any agreement made between Network Rail and the person in or to whom the right of way in question is vested or belongs which makes reference to this article (whether that agreement was made before or after any of the events mentioned in sub-paragraph (a) and before or after the coming into force of the Order).

---

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

### **Time limit for exercise of powers of acquisition**

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

- (a) no notice to treat is to be served under Part 1 of the 1965 Act as applied to the acquisition of land by article 4 (application of Part 1 of the 1965 Act); and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 5 (application of the 1981 Act).

(2) The powers conferred by article 8 (temporary possession of land) cease at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents Network Rail from 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 3**

### **MISCELLANEOUS AND GENERAL**

#### *Streets*

#### **Street to be stopped up**

**13.**—(1) Subject to the provisions of this article, Network Rail may, in connection with the carrying out of the authorised works, stop up the street specified in columns (1) and (2) of Schedule 4 (street to be stopped up) to the extent specified, by reference to the hatching shown on the stopping up plan, in column (3) of that Schedule.

(2) Where a street has been stopped up under this article all rights of way over or along the street stopped up are extinguished.

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

(4) This article is subject to Part 2 of Schedule 5 (provisions relating to statutory undertakers, etc.).

#### *Miscellaneous and General*

#### **Power to survey and investigate land**

**14.**—(1) Network Rail may for the purposes of this Order—

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

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

(3) Notice given in accordance with paragraph (2) must include—

- (a) a statement of the recipient's rights under paragraph (15); and
- (b) a copy of any warrant issued under paragraph (8).

(4) If Network Rail proposes to do any of the following, the notice must include details of what is proposed—

- (a) searching, boring or excavating;
- (b) leaving apparatus on land;
- (c) taking samples;
- (d) an aerial survey;
- (e) carrying out any other activities that may be required to facilitate compliance with the instruments mentioned in paragraph (5).

(5) The instruments referred to in paragraph (4)(e) are—

- (a) Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment; or
- (b) Council Directive 92/42/EEC of 21 May 1992 on the conservation of natural habitats and wild fauna and flora.

(6) If Network Rail obtains a warrant after giving notice in accordance with paragraph (2) it must give a copy of the warrant to all those to whom it gave a notice.

(7) Any person entering land under this article on behalf of Network Rail—

- (a) must, if so required, before or after entering the land produce written evidence of authority to do so including any warrant issued under paragraph (8);
- (b) may not use force unless a justice of the peace has issued a warrant under paragraph (8) authorising the person to do so;
- (c) 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;
- (d) may only enter and survey land at a reasonable time; and
- (e) must, if the land is unoccupied or the occupier is absent from the land when the person enters it, leave it as secure against trespassers as when the person entered it.

(8) A justice of the peace may issue a warrant authorising a person to use force in the exercise of the power conferred by this article if satisfied—

- (a) that another person has prevented or is likely to prevent the exercise of that power, and
- (b) that it is reasonable to use force in the exercise of that power.

(9) The force that may be authorised by a warrant is limited to that which is reasonably necessary.

(10) A warrant authorising the person to use force must specify the number of occasions on which Network Rail can rely on the warrant when entering and surveying or valuing land.

(11) The number specified must be the number which the justice of the peace considers appropriate to achieve the purpose for which the entry and survey or valuation are required.

(12) Any evidence in proceedings for a warrant under this article must be given on oath.

(13) No trial holes are to be made under this article—

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

but such consent must not be unreasonably withheld.

(14) If either a highway authority or a street authority which receives an application for consent fails to notify Network Rail of its decision within 28 days of receiving the application for consent—

- (a) under paragraph (13)(a) in the case of a highway authority; or
- (b) under paragraph (13)(b) in the case of a street authority,

that authority is deemed to have granted consent.

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

(16) Nothing in this article overrides the requirement to obtain scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979(a).

### **Disclosure of confidential information**

**15.** A person who-

- (a) enters a factory, workshop or workplace under the provisions of article 14 (power to survey and investigate land); and
- (b) discloses to any person any information obtained by him relating to any manufacturing process or trade secret,

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

### **Statutory undertakers, etc.**

**16.** The provisions of Schedule 5 (provisions relating to statutory undertakers, etc.) has effect.

### **Certification of plans etc.**

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

### **Service of notices**

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

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

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

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(b) 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) 1979 c.46.  
(b) 1978.c.30.

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

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

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is taken to be fulfilled where the recipient of the notice or other document to be transmitted has given his 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 transmission given by a person may be revoked by that person in accordance with paragraph 8.

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

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

### **No double recovery**

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

### **Arbitration**

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

Signed by authority of the Secretary of State

*Natasha Kopala*

Head of the Transport and Works Act Orders Unit

Date

Department for Transport

# SCHEDULES

## SCHEDULE 1

Article 6

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

#### *Compensation enactments*

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

**2.—**(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modifications set out in sub-paragraph (2).

(2) For section 5A(5A) (relevant valuation date) of the 1961 Act substitute—

“(5A) If—

- (a) the acquiring authority enters on land for the purposes of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 1 to the Network Rail (Chart Leacon) Order 201[x] (“the 201[x] Order”)),
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph (5)(8) of Schedule 1 to the 2018 Order) to acquire an interest in the land, and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land when it entered on that land for the purpose of exercising that right.”.

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

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

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

#### *Application of the 1965 Act*

**4.—**(1) Part 1 of the 1965 Act, as applied by article 4 (application of Part 1 of the 1965 Act) to the acquisition of land under article 3(1) (power to acquire land) applies to the compulsory acquisition of rights under article 6(1) (power to acquire new rights)—

- (a) with the modifications specified in paragraph (5); and
- (b) with such other modifications as may be necessary.

**5.—**(1) The modifications referred to in paragraph 4(a) are as follows.

(2) References in the 1965 Act to land are, in appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to

- (a) the right acquired or to be acquired; or

---

(a) 1973.c.26.

(b) the land over which the right is or is to be exercisable.

(3) For section 7 (measure of compensation in the case of severance) of the 1965 Act substitute:

“(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 is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

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

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

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

(5) Section 11(a) (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right, as well as the notice of entry required by subsection (1) of that section (as it applies to a compulsory acquisition under article 3(1)), it has power, exercisable in the equivalent circumstances and subject to the equivalent conditions, to enter for the purpose of exercising that right; and sections 11A(b) (powers of entry: further notices of entry), 11B(c) (counter-notice requiring possession to be taken on specified date), 12(d) (unauthorised entry) and 13(e) (refusal to give possession to acquiring authority) of the 1965 Act are modified correspondingly.

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

(7) Section 22 (interests omitted from purchase) of the 1965 Act (as modified by article 4(7)) is modified so as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

(8) For Schedule 2A to the 1965 Act substitute—

---

(a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 6 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.

(b) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).

(c) Section 11B was inserted by section 187(2) of the Housing and Planning Act 2016.

(d) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23) and paragraph 4 of Schedule 16 to the Housing and Planning Act 2016.

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

(f) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

**“SCHEDULE 2A**  
**COUNTER-NOTICE REQUIRING PURCHASE OF LAND**

***Introduction***

**1.**—(1) This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over the whole or part of a house, building or factory.

**2.** In this Schedule “house” includes any park or garden belonging to a house

*Counter-notice requiring purchase of land*

**3.** A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner’s interest in the house, building or factory.

**4.** A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

*Response to counter-notice*

**5.** On receiving a counter-notice, the authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

**6.** The authority must serve notice of its decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

**7.** If the authority decides to refer the counter-notice to the Upper Tribunal it must do so within the decision period.

**8.** If the authority does not serve notice of a decision within the decision period it is to be treated as if it had served notice of a decision to withdraw the notice to treat at the end of that period.

**9.** If the authority serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

*Determination by Upper Tribunal*

**10.** On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

**11.** In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right,
- (b) the proposed use of the right to be acquired, and
- (c) if the right is proposed to be acquired for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

**12.** If the Upper Tribunal determines that the acquisition of the right would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the acquiring authority ought to be required to take.

**13.** If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

**14.—(1)** If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”

## SCHEDULE 2

Article 8

### LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i>  <i>Area</i>	<i>(2)</i>  <i>Number of land shown on the land plan</i>	<i>(3)</i>  <i>Purpose for which temporary possession may be taken</i>
County of Kent Ashford Borough, Ward of Victoria	8, 10, 11	Working site and access.

SCHEDULE 3

Article 6

LAND IN WHICH ONLY NEW RIGHTS MAY BE ACQUIRED

<i>(1)</i>  <i>Area</i>	<i>(2)</i>  <i>Number of land shown on the land plan</i>	<i>(3)</i>  <i>Purpose for which rights may be acquired</i>
County of Kent Ashford Borough, Ward of Victoria	9	<p>Access for and right to remove the walkway structure.</p> <p>Access for and right to maintain ladder.</p> <p>Access for and right to carry out maintenance works for the benefit of the authorised works.</p> <p>Access for and the right to carry out works to secure and maintain the boundary of the authorised works.</p> <p>Access for construction of the authorised works.</p>
County of Kent Ashford Borough, Ward of Victoria	11	Access for construction of the authorised works.

SCHEDULE 4

Article 13

STREET TO BE STOPPED UP

---

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Street to be stopped up</i>	<i>Extent of stopping up</i>
County of Kent Ashford Borough, Ward of Victoria	Highway between Beaver Lane and A28 southbound	Land shown hatched on stopping up plan

---

## PROVISIONS RELATING TO STATUTORY UNDERTAKERS, ETC.

## PART 1

*Apparatus of statutory undertakers, etc. on land acquired*

1. Sections 271 to 274(a) (extinguishment of rights of statutory undertakers, etc.) of the 1990 Act apply in relation to any land acquired or appropriated or used by Network Rail 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(b), which provide for the payment of compensation) have effect accordingly.

2. In the provisions of the 1990 Act, as applied by sub-paragraph (1)—

- (a) references to the appropriate Minister are references to the Secretary of State; and
- (b) references to land acquired or appropriated as mentioned in section 271(1) of the 1990 Act are references to land acquired, appropriated or used as mentioned in sub-paragraph (1).

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 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 Network Rail compensation in respect of expenditure reasonably incurred by him, 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. Paragraph (3) does not apply in the case of the removal of a public sewer but where such a sewer is removed in pursuance of such a notice or order as is mentioned in that paragraph, any person who is—

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

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

5. The provisions of the 1990 Act mentioned in paragraph (1), as applied by that paragraph, do not have effect in relation to apparatus in respect of which Part 3 of the 1991 Act applies.

6. In this Schedule—

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

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

---

(a) Sections 272 to 274 were amended by paragraph 103(1) and (2) of Schedule 17 to the Communications Act 2003 (c.21).  
 (b) Section 279(3) was amended by paragraph 103(1) and (2), and section 280 was amended by paragraph 104, of Schedule 17 to the Communications Act 2003. Sections 280 and 282 were amended by S.I. 2009/1307.  
 (c) 1989 c.29.

## PART 2

### *Apparatus of statutory undertakers, etc. in stopped up streets*

7. On the stopping up of any street under article 13 (street to be stopped up) any statutory utility whose apparatus is under, in, upon, along or across that street has the same powers and rights in respect of that apparatus, subject to the provisions of this Part of this Schedule as if this Order had not been made.

8. On the stopping up of any street under article 13 (street to be stopped up) any statutory utility whose apparatus is under, in, upon, over, along or across that street may, and if reasonably requested to do so by Network Rail must—

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

9. Subject to the following provisions of this Part of this Schedule, Network Rail must pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

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

10. If in the course of the execution of relocation works under paragraph (8)—

- (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 Network Rail, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this paragraph would be payable to the statutory utility by virtue of paragraph (9) is to be reduced by the amount of that excess.

11. For the purposes of paragraph (10)—

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

---

(a) The definition of “public utility undertakers” was amended by section 190(3) of, and part 1 of Schedule 27 to, the Water Act 1989 (c.15) and section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c. 29).

**12.** An amount which, apart from this sub-paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (9) (and having regard, where relevant, to paragraph (10)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

**13.** In this Part of this Schedule—

“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 1980 Act or a public communications provider as defined in section 151(1) (interpretation) of the Communications Act 2003.

**SCHEDULE 6**  
**PROTECTIVE PROVISIONS**  
**PART 1**

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

**Application**

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

2. The provisions of paragraph 1 of Part 1 of Schedule 5 (provisions relating to statutory undertakers, etc.), in so far as they relate to the removal of apparatus, do not apply in relation to apparatus to which this Part of this Schedule applies.

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

**Interpretation**

4. In this Part of this Schedule—

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

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989) 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(a); 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 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

---

(a) 1991 c.56.

“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(a);
- (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.

### **Acquisition of apparatus**

5. Without affecting any provision in this Order or anything shown on the land plan, Network Rail must not acquire any apparatus otherwise than by agreement.

### **Alternative apparatus**

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

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, Network Rail requires the removal of any apparatus placed in that land, it must give to the undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed.

(3) Any alternative apparatus to be constructed in land of Network Rail under this Part of this Schedule is to be constructed in such manner and in such line or situation as may be agreed between the undertaker in question and Network Rail, or in default of such agreement settled by arbitration in accordance with article 20 (arbitration).

(4) In any case where alternative apparatus is to be provided or constructed under sub-paragraph (2), 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, Network Rail must, subject to sub-paragraph (5), afford to the undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of Network Rail and subsequently for the maintenance of that apparatus.

(5) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of Network Rail, or Network Rail is unable to afford such facilities and rights as are mentioned in sub-paragraph (4), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the undertaker in question must, on receipt of a written notice to that effect from Network Rail, 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.

(6) The undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 20, and after the grant to the undertaker of any such facilities and rights as are referred to in sub-paragraph (4) or (5), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by Network Rail to be removed under the provisions of this Part of this Schedule.

(7) Without affecting anything in sub-paragraph (6), if Network Rail 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, must be executed by Network

---

(a) 1986 c. 44.

Rail without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the undertaker.

(8) Nothing in sub-paragraph (6) authorises Network Rail 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.

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, Network Rail affords to an undertaker facilities and rights for the construction and maintenance in land of Network Rail of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between Network Rail and the undertaker in question or in default of agreement settled by arbitration in accordance with article 20 (arbitration).

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

- (a) give effect to all reasonable requirements of Network Rail for ensuring the safety and efficient operation of the railway and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of Network Rail 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 Network Rail in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by Network Rail to that undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

#### **Existing apparatus: protection and access**

8.—(1) Not less than 28 days before starting the execution of any of the authorised works that are near to, or will or may affect, any apparatus the removal of which has not been required by Network Rail under paragraph 6(2), Network Rail must submit to the undertaker in question a plan, section and description of the works to be executed.

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

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

(4) If an undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by Network Rail, reasonably requires the removal of any apparatus and gives written notice to Network Rail of that requirement, paragraphs 1 to 7 apply as if the removal of the apparatus had been required by Network Rail under paragraph 6(2).

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

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

## **Expenses**

**9.**—(1) Subject to the following provisions of this paragraph, Network Rail must 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 (including costs or compensation payable in connection with the acquisition of land for that purpose) which may be required in consequence of the execution of any of such works as are referred to in paragraph 6(2).

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

(3) If in accordance with the provisions of this Part 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 of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by Network Rail or, in default of agreement, is not determined by arbitration in accordance with article 20 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

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

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

(5) An amount which apart from this sub-paragraph would be payable to an undertaker in respect of works under sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(6) Any dispute as to whether a financial benefit is conferred in accordance with sub-paragraph (5) or as to the amount of such financial benefit which cannot be agreed is to be determined in accordance with article 20 (arbitration).

## **Damage to apparatus: costs, losses, etc.**

**10.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the authorised works 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 Network Rail must—

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

(2) Nothing in sub-paragraph (1) imposes any liability on Network Rail 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 must give Network Rail reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of Network Rail which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

### **Enactments and agreements**

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

## PART 2

### FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

**12.**—(1) For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between Network Rail and the operator.

(2) In this Part of this Schedule—

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system are to be construed in accordance with paragraph 7(2) of that code;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the Communications Act 2003<sup>(a)</sup>;

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the Communications Act 2003; and
- (b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the Communications Act 2003; and

“operator” means the operator of an electronic communications code network.

**13.**—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised works or their construction, or of any subsidence resulting from any of those works—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator, Network Rail must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and must—
  - (i) make reasonable compensation to that operator for loss sustained by it; and
  - (ii) indemnify that operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, that operator by reason, or in consequence, of any such damage or interruption.

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

(3) The operator must give Network Rail reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand may be made without the consent of Network Rail which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

---

(a) 2003 c. 21.

(4) Any difference arising between Network Rail and the operator under this paragraph is to be referred to and settled by arbitration under article 20 (arbitration).

**14.** This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between Network Rail and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised works.

**15.** Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between Network Rail and an operator in respect of any apparatus laid or erected in land belonging to Network Rail on the date on which this Order is made.

#### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order confers powers on Network Rail Infrastructure Limited (Network Rail) to acquire compulsorily land and rights in land required in connection with the construction, maintenance and operation of a new light maintenance depot facility, [which development has been separately authorised by a grant of planning permission under Part III of the Town and Country Planning Act 1990 (c. 8) from Ashford Borough Council in the county of Kent]. The Order also confers powers of temporary use of land in connection with that development.

The Order also confers powers on Network Rail to stop up land at the western end of Beaver Lane.

A copy of the deposited plans and the book of reference referred to in the Order may be inspected, on request, at the offices of Network Rail Infrastructure Limited at Network Rail National Records Centre, Unit 5, Audax Road, Clifton Moor, York, YO30 4US.