

**200 No.**

**TRANSPORT AND WORKS, ENGLAND**

**TRANSPORT**

***Draft / The Felixstowe Branch Line and  
Ipswich Yard Improvement Order 200***

<i>Made</i> - - - -	200
<i>Coming into force</i> - -	200

**ARRANGEMENT OF ARTICLES**

**PART I**

**PRELIMINARY**

1. Citation and commencement
2. Interpretation
3. Incorporation of Railways Clauses Acts
4. Application of the 1991 Act

**PART II**

**WORKS PROVISIONS**

*Principal Powers*

5. Power to construct and maintain works
6. Power to deviate

*Streets*

7. Power to execute street works
8. Stopping up of streets

9. Temporary stopping up of streets and traffic management
10. Access to works
11. Construction and maintenance of new or altered streets
12. Construction of bridges
13. Agreements with street authorities

*Level crossings*

14. Alterations to level crossings as a result of the authorised works
15. Stopping-up of level crossings

*Supplemental Powers*

16. Discharge of water
17. Protective works to buildings
18. Power to survey and investigate land

### **PART III**

#### **ACQUISITION AND POSSESSION OF LAND**

*Powers of Acquisition*

19. Power to acquire land
20. Application of Part I of the Compulsory Purchase Act 1965
21. Application of the Compulsory Purchase (Vesting Declarations) Act 1981
22. Power to acquire new rights
23. Rights under or over streets

*Temporary Possession of Land*

24. Temporary use of land for construction works
25. Temporary use of land for maintenance of works

*Compensation*

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

*Supplementary*

- 28. Acquisition of part of certain properties
- 29. Extinction or suspension of private rights of way
- 30. Time limit for exercise of powers of acquisition

**PART IV**

**MISCELLANEOUS AND GENERAL**

- 31. Planning permission and supplementary matters
- 32. Power to lop trees overhanging the authorised works
- 33. Power to operate and use railway
- 34. Power to transfer undertaking
- 35. Power to charge fares
- 36. Maintenance of approved works etc.
- 37. Agreements with Network Rail
- 38. Proceedings in respect of statutory nuisance
- 39. Control of construction sites: appeals
- 40. Application of landlord and tenant law
- 41. Obstruction of construction of authorised works
- 42. Trespass
- 43. Disclosure of confidential information
- 44. Statutory undertakers etc.
- 45. Protective provisions
- 46. As to application of certain railway enactments
- 47. Certificate of plans etc.
- 48. Service of notices
- 49. No double recovery
- 50. Arbitration

## **SCHEDULES**

- Schedule 1    The Scheduled Works
- Schedule 2    Acquisition of certain land
- Schedule 3    Streets subject to alteration of layout and streets subject to street works
- Schedule 4    Streets to be permanently stopped up
  - Part 1    Streets for which a substitute is to be provided
  - Part 2    Streets for which no substitute is to be provided
- Schedule 5    Streets to be temporarily stopped up or subject to traffic management
- Schedule 6    Access to works
- Schedule 7    Modification of compensation and compulsory purchase enactments for creation of new rights
- Schedule 8    Level crossings
  - Part 1    Level crossings altered as a result of the authorised works
  - Part 2    Level crossings to be stopped up
- Schedule 9    Land of which temporary possession may be taken or use made
- Schedule 10    Provisions relating to statutory undertakers etc.
- Schedule 11    Protective provisions

An application has been made for an Order under sections 1 and 5 of the Transport and Works Act 1992 ("the 1992 Act")<sup>(a)</sup>, in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2000<sup>(b)</sup>, made under sections 6, 7 and 10 of the 1992 Act;

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

The Secretary of State has considered the objections made and not withdrawn [and the report of the person who held the inquiry and] [has determined to make an Order giving effect to the proposals comprised in the application with modifications which in his opinion do not make any substantial change to the proposals;]

The Secretary of State's determination was published in the London Gazette on \_\_\_\_\_ ;

The Secretary of State for Transport thereby makes the following Order in exercise of the powers conferred by sections 1 and 5 and paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 15, 16 and 17 of schedule 1 to the 1992 Act and all other powers enabling him in that behalf: —

## PART I

### PRELIMINARY

#### Citation and Commencement

1. This Order may be cited as the Felixstowe Branch Line Order and shall come into force on \_\_\_\_\_ .

#### Interpretation

- 2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961<sup>(c)</sup>;

“the 1965 Act” means the Compulsory Purchase Act 1965<sup>(d)</sup>;

“the 1990 Act” means the Town and Country Planning Act 1990<sup>(e)</sup>;

“the 1991 Act” means the New Roads and Street Works Act 1991<sup>(f)</sup>;

“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;

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

---

<sup>(a)</sup> 1992 c. 42.

<sup>(b)</sup> S.I. 2000/2190

<sup>(c)</sup> 1961 c.33.

<sup>(d)</sup> 1965 c.56.

<sup>(e)</sup> 1990 c.8.

<sup>(f)</sup> 1991 c. 22.

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

“carriageway”, “footway”, “highway” and “highway authority” have the same meaning as in the Highways Act 1980<sup>(a)</sup>;

“electronic transmission” means a communication transmitted —

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

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

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

“limits of land to be acquired or used” means the limits of land to be acquired or used for the scheduled works shown on the works and land plans;

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

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

“owner”, in relation to land, has the same meaning as in the Acquisition of Land Act 1981<sup>(b)</sup>;

“the railway” means the Felixstowe Branch Line as the same may be configured from time to time;

“the rights of way plans” means the plans certified by the Secretary of State as the rights of way plans prepared in pursuance of rule 12(1)(a) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2000 for the purposes of this Order;

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

“the sections” means the sections shown on the works and land plans and certified by the Secretary of State as the sections prepared in pursuance of rule 12(1)(a) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2000 for the purposes of this Order;

“street” has the same meaning as in the Highways Act 1980 and includes part of a street;

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

“the tribunal” means the Lands Tribunal;

“the undertaker” means The Felixstowe Dock and Railway Company;

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

---

<sup>(a)</sup> 1980 c. 66.

<sup>(b)</sup> 1981 c. 67.

“works and land plans” means the plans certified by the Secretary of State as the works and land plans prepared in pursuance of rule 12(1)(a) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2000 for the purposes of this Order.

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

(3) All distances, directions and lengths stated in the description of the scheduled works or in any description of powers or lands shall be construed as if the words “or thereabouts” were inserted after each such distance, direction and length, and distances between points on a scheduled work shall be taken to be measured along the scheduled work.

### **Incorporation of Railways Clauses Acts**

**3.—(1)** The following provisions of the Railways Clauses Consolidation Act 1845<sup>(a)</sup> shall be incorporated in this Order—

section 46 (crossing of roads—level crossings), subject to paragraph (4);

section 47 (provision in cases where roads are crossed on a level);

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

section 61 (company to make sufficient approaches and fences to highways crossing on the level);

section 68 (accommodation works by company);

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

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

section 75 (omission to fasten gates);

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<sup>(b)</sup>;

section 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) The following provisions of the Railways Clauses Act 1863<sup>(c)</sup> shall be incorporated in this Order—

sections 5, 6 and 7 (level crossings),

and section 12 (signals, watchmen etc.).

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

“the company” means the undertaker;

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

“lease” includes an agreement for a lease;

---

<sup>(a)</sup> 1845 c. 20.

<sup>(b)</sup> 1923 c. 20.

<sup>(c)</sup> 1863 c. 92

“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.

(4) In section 46 of the said Act of 1845, as incorporated in this Order, for the proviso there shall be substituted the words “Provided always that, with the consent of the highway authority and subject to such conditions as the authority may reasonably impose, the railway may be carried across a highway on the level.”

### **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 III 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 whether temporary or permanent of a street by the undertaker under the powers conferred by this Order 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 10 (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 undertaker 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 III of that Act; or
- (b) have effect in relation to street works with regard to which the provisions of Part III of the 1991 Act apply.

## **PART II**

### **WORKS PROVISIONS**

#### **Power to construct and maintain works**

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

(2) Subject to article 5 (power to deviate), the scheduled works may only be constructed in the lines or situations shown on the works and land plans and in accordance with the levels shown on the sections.

(3) Subject to paragraph (6), the undertaker may carry out and maintain such of the following works as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works, namely—

- (a) works to alter the position of apparatus, including mains, sewers, drains and cables;
- (b) works to alter, erect and construct such houses, warehouses, offices and other buildings, yards, stations, engines, machinery, apparatus, structures and other works, and conveniences as the undertaker sees fit;
- (c) junctions and communications (including the provision of steps and ramps for the use of persons on foot) with any highway or access way interfered with by, or contiguous with, any of the works described in this paragraph, and works to widen or alter any of those works or another highway, or of crossing under or over another highway or access way;
- (d) all such embankments, aprons, abutments, retaining walls, wing walls, culverts and other such works as the undertaker thinks fit;
- (e) works to alter the course of, or otherwise interfere with, a watercourse other than a navigable watercourse;
- (f) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the scheduled works; and
- (g) works for the benefit or protection of premises affected by the scheduled works.

(4) Subject to paragraph (6) below, the undertaker may from time to time carry out and maintain such other works (of whatever nature) as may be necessary, convenient or expedient for the purposes of, in connection with or in consequence of, the constructed works.

(5) Subject to paragraph (6), the undertaker may carry out such other works (of whatever nature) as may be necessary, convenient or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works, other than works that would interfere with a navigable watercourse.

(6) Paragraphs (4) and (5) shall only authorise the carrying out or maintenance of works outside the limits of deviation if such works are carried out on land shown on the works and land plans as being within the limits of land to be acquired or used for the purposes of the authorised works or for any other purposes that are ancillary to the railway undertaking.

### **Power to deviate**

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

### *Streets*

### **Power to execute street works**

7.—(1) The undertaker may, for the purposes of the authorised works, enter upon so much of any of the streets specified in Schedule 3 to this Order as is within the Order limits 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;
- (d) remove apparatus from the street; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b) and (c).

(2) This article is subject to paragraph 2 of Schedule 10 to this Order.

(3) In the article “apparatus” has the same meaning as in Part III of the 1991 Act<sup>(a)</sup>.

---

<sup>(a)</sup> 1991 c. 22.

## Stopping up of streets

8.—(1) Subject to the provisions of this article, the undertaker 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 4 to this Order to the extent specified, by reference to the letters and numbers shown on the rights of way plans, in column (3) of those Parts of that Schedule.

(2) No street specified in columns (1) and (2) of Part 1 of Schedule 4 to this Order (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 thereafter maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).

(3) No street specified in columns (1) and (2) of Part 2 of Schedule 4 to this Order (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 undertaker 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 undertaker 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 undertaker.

(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 I of the 1961 Act<sup>(a)</sup>.

(7) This article is subject to paragraph 2 of Schedule 10 to this Order.

---

<sup>(a)</sup> 1961 c.33.

## **Temporary stopping up of streets and traffic management**

**9.**—(1) The undertaker, during and for the purposes of the execution of the authorised works, may temporarily stop up, alter, divert or impose traffic control measures upon any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (2), prevent all or any class of persons from passing along the street.

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

(3) The undertaker 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 undertaker may exercise the powers conferred by this article in relation to the streets specified in columns (1) and (2) of Schedule 5 to this Order to the extent specified, by reference to the letters and numbers shown on the rights of way plans, in column (3) of that Schedule.

(5) The undertaker 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, but such consent shall not be unreasonably withheld.

(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 I of the 1961 Act.

(7) This article is subject to paragraph 2 of Schedule 10 to this Order.

## **Access to works**

**10.** The undertaker may, for the purposes of the authorised works—

- (a) form and lay out means of access, or improve existing means of access, to the streets specified in columns (1) and (2) of Schedule 6 to this Order; 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 Order limits as the undertaker reasonably requires for the purposes of the authorised works.

## **Construction and maintenance of new or altered streets**

**11.**—(1) Any street being or intended to be a public 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 undertaker 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, unless otherwise agreed, be maintained by and at the expense of the undertaker 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 undertaker.

### **Construction of bridges**

**12.** Any bridge 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.

### **Agreements with street authorities**

**13.—(1)** A street authority and the undertaker may enter into agreements with respect to—

- (a) the construction of any new street (including any structure carrying the street over or under a railway) 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) the provision of any of the new level crossings over the highway referred to in article 14(1);
- (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 7(1).

(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.

### **Alterations to level crossings as a result of the authorised works**

**14.—(1)** Subject to the provisions of this article, the undertaker may, in connection with the construction of the scheduled works, provide any of the new level crossings specified in columns (1) and (4) of Part 1 of Schedule 8 to this Order in substitution for any of the existing level crossings specified in columns (1) and (2) of that Part of that Schedule.

(2) In respect of any of the existing level crossings in columns (1) and (2) of Part 1 of Schedule 8 to this Order, the existing orders specified in column (3) of that Part of that Schedule shall cease to have effect and the provisions of this article shall apply in substitution therefor.

(3) The undertaker shall provide, maintain and operate at or near any new level crossing such protective equipment as the Health and Safety Executive may in writing direct.

(4) Any traffic sign placed pursuant to this article on or near a highway or other road to which the public has access shall be treated for the purposes of section 64(4) of the Road Traffic Regulation Act 1984<sup>(a)</sup> as having been placed as provided by that Act.

(5) The undertaker may in the exercise of the powers conferred by this article alter the level of any highway across which the railway is carried or to be carried and which is referred to in Part 1 of Schedule 8 to this Order.

(6) The highway authority and the undertaker may enter into agreements with respect to the construction and maintenance of any new level crossing; and such an agreement may contain such terms as to payment or otherwise as the parties consider appropriate.

(7) This article is subject to the provisions of paragraph 2 of Schedule 10 to this Order.

(8) In this article—

"barrier" includes gate;

"the highway authority" means Suffolk County Council;

"existing level crossing" means the place at which the railway crosses a highway on the level under the powers of the existing orders as specified in columns (1) (2) and (3) of Part I of Schedule 6 to this Order;

"the existing orders" means the orders made under the Level Crossings Act 1983<sup>(b)</sup> specified in column (3) of Part 1 of Schedule 8 to this Order in relation to the level crossings specified in columns (1) and (2) of that Part of that Schedule;

"new level crossing" means the place at which the railway will cross a highway on the level under the powers conferred by this article as specified in columns (1) and (4) of Part 1 of Schedule 8 to this Order; and

"protective equipment" includes barriers, gates, lights, traffic signs (within the meaning of section 64(1) of the Road Traffic Regulation Act 1984), manual, mechanical, automatic, electrical or telephonic equipment or other devices.

### **Stopping-up of level crossings**

**15.—**(1) Subject to paragraph (3), the level crossings specified in columns (1) and (2) of Part 2 of Schedule 8 to this Order shall be stopped up and discontinued.

(2) Subject to paragraph (3) and paragraph 2 of Schedule 10 to this Order, upon the stopping up and discontinuance of a specified level crossing referred to in paragraph (1), any right of way over it shall be extinguished.

(3) Paragraphs (1) and (2) shall not take effect with respect to a right of way carried by a level crossing specified in columns (1) and (2) of Part 2 of Schedule 8 to this Order until the new way specified in relation to it in column (4) of that Part of that Schedule is open for use in accordance with the reasonable requirements of the highway authority.

---

<sup>(a)</sup> 1984 c. 27.

<sup>(b)</sup> 1983 c. 16.

(4) In providing the new ways specified in column (4) of Part 2 of Schedule 8 to this Order, the undertaker may within the Order limits erect barriers and signs and carry out or provide any ancillary works or conveniences, subject to the agreement of the highway authority which agreement shall not be unreasonably withheld.

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

### *Supplemental Powers*

#### **Discharge of water**

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

(3) The undertaker shall not discharge any water into any watercourse except with the consent of the Environment Agency; and such consent may be given subject to such terms and conditions as the Environment Agency may reasonably impose, but shall not be unreasonably withheld.

(4) The undertaker shall not discharge any water into any public sewer or drain except with the consent of the authority to which it belongs; and such consent may be given subject to such terms and conditions as the authority may reasonably impose, but shall not be unreasonably withheld.

(5) The undertaker shall not make any opening into any public sewer or drain except—

(a) in accordance with plans approved by the authority to which the sewer or drain belongs, but such approval shall not be unreasonably withheld; and

(b) where the authority has been given the opportunity to supervise the making of the opening.

(6) The undertaker shall not, in the exercise of the powers conferred by this article, damage or interfere with the beds or banks of any watercourse forming part of a main river.

(7) The undertaker 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.

(8) 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<sup>(b)</sup>.

(9) In this article—

---

<sup>(a)</sup> 1991 c. 56.

<sup>(b)</sup> 1991 c. 57.

- (a) “public sewer or drain” means a sewer or drain which belongs to the Commission for the New Towns, the Environment Agency, a harbour authority within the meaning of the Harbours Act 1964<sup>(a)</sup>, an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation;
- (b) “watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and
- (c) other expressions, except watercourse, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

### **Protective works to buildings**

**17.—(1)** Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker 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 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 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 undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

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

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, 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;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

---

<sup>(a)</sup> 1964 c. 40.

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

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 46 (arbitration).

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

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

(9) Without prejudice to article 49 nothing in this article shall relieve the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act<sup>(a)</sup>.

(10) Any compensation payable under paragraph (7) or (8) shall be determined, in case of dispute, under Part I of the 1961 Act<sup>(b)</sup>.

(11) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building 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 by the construction, maintenance or operation of the authorised works.

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

**18.—**(1) The undertaker 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;

---

<sup>(a)</sup> 1965 c. 56.

<sup>(b)</sup> 1961 c. 33.

- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions as the undertaker 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 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 undertaker—

- (a) shall, if so required, before or after entering the land produce written evidence of his authority to do so; and
- (b) may take with him 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 undertaker 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 I 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<sup>(a)</sup>.

### **PART III**

#### **ACQUISITION AND POSSESSION OF LAND**

##### *Powers of Acquisition*

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

**19.—**(1) The undertaker may acquire compulsorily—

---

<sup>(a)</sup> 1979 c. 46.

(a) so much of land shown on the works and land plans within the Order limits and described in the book of reference as may be required for or in connection with the authorised works; and

(b) so much of the land shown specified in columns (1) and (2) of Schedule 2 to this Order 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 connected with or ancillary to its undertaking or a railway undertaking.

(2) Without prejudice to the generality of paragraph (1) above, the land which may be acquired compulsorily under that paragraph shall include land which is or will be required—

(a) for use in mitigating the effect on the environment of any of the works authorised by this Order; or

(b) for use in relocating any apparatus which is expedient to divert or replace in consequence of the carrying out of any of the works authorised by this Order;

(3) In this article -

"apparatus" has the same meaning as in article 6(3) above and includes apparatus belonging to a statutory utility;

"statutory utility" means a licence holder within the meaning of Part I of the Electricity Act 1989<sup>(a)</sup>, a public gas transporter within the meaning of Part I of the Gas Act 1986<sup>(b)</sup>, a water undertaker within the meaning of the Water Industry Act 1991, a sewerage undertaker within Part I of that Act and any local authority which is a relevant authority for the purposes of section 97 of that Act.

(2) This article is subject to article 24.

### **Application of Part I of the Compulsory Purchase Act 1965**

**20.**—(1) Part I 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<sup>(c)</sup> applies; and

(b) as if this Order were a compulsory purchase order under that Act.

(2) Part I of the 1965 Act, as so 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.

---

<sup>(a)</sup> 1989 c. 29.

<sup>(b)</sup> 1986 c. 44.

<sup>(c)</sup> 1981 c. 67.

## **Application of the Compulsory Purchase (Vesting Declarations) Act 1981<sup>(a)</sup>**

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

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so 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 the London Gazette and 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) he is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) he 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 the London Gazette and 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 19.

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

**22.**—(1) The undertaker may acquire compulsorily such easements or other rights over any land referred to in paragraph (1)(a) or (b) of article 19 as may be required for any purpose for which that

---

<sup>(a)</sup> 1981 c. 66.

land may be acquired under that provision, by creating them as well as by acquiring easements or other rights already in existence.

(2) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 7 to this Order) where the undertaker acquires a right over land under paragraph (1) the undertaker shall not be required to acquire a greater interest in that land.

(3) Schedule 7 to this Order 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 of a right over land by the creation of a new right.

### **Rights under or over streets**

**23.**—(1) The undertaker may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised works and may use the subsoil or air-space for those purposes or any other purpose ancillary to a railway undertaking.

(2) Subject to paragraph (4), the power under paragraph (1) may be exercised in relation to a street without the undertaker 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 undertaker 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 I 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**

**24.**—(1) Subject to paragraph (11), the undertaker may, in connection with the carrying out of the authorised works—

- (a) enter upon and take temporary possession of the land specified in columns (1) and (2) of Schedule 9 to this Order for the purpose specified in relation to that land in column (3) of that Schedule relating to the works (or any of those works) so specified in column (4) of that Schedule;
- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and

(d) use the land for the purposes of a working site with access to the working site for construction purposes in connection with the authorised works.

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

(3) Subject to paragraph (11) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the work specified in relation to that land in column (4) of Schedule 9 to this Order.

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

(5) The undertaker 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 I of the 1961 Act.

(7) Without prejudice to article 49, 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) except that the undertaker shall not be precluded from acquiring new rights over any part of that land under article 22.

(9) Where the undertaker 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 20(1) (application of Part I of the Compulsory Purchase Act 1965).

(11) Where, in relation to land shown on the works and land plans within the limits of land to be acquired or used as required for the purpose of a right of access—

(a) references in this article to entering upon and taking possession shall be construed accordingly as reference to using land as a means of access and related expressions shall be construed accordingly; and

(b) paragraphs (1)(b) and (c) shall not apply except with the consent of the owner of that land whose consent is not to be unreasonably withheld.

### **Temporary use of land for maintenance of works**

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

- (a) enter upon and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the work or any ancillary works connected with it; 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 undertaker to take temporary possession of—

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

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article the undertaker shall serve notice of the intended entry on the owners and occupiers of the land.

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

(6) The undertaker 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 I of the 1961 Act<sup>(a)</sup>.

(8) Without prejudice to article 49, 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 undertaker 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 20(1) (application of Part I of the Compulsory Purchase Act 1965)<sup>(b)</sup>.

(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.

---

<sup>(a)</sup> 1961 c. 33.

<sup>(b)</sup> 1965 c. 56.

## *Compensation*

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

**26.—**(1) In assessing the compensation payable to any person on the acquisition from him 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 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**

**27.—**(1) In assessing the compensation payable to any person in respect of the acquisition from him 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 him by reason of the construction of the authorised works.

(2) In assessing the compensation payable to any person in respect of the acquisition from him of any new rights over land (including the subsoil) under article 22, 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 him by reason of the construction of the authorised works.

## *Supplementary*

### **Acquisition of part of certain properties**

**28.—**(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 22 (application of Part I 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 so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat and stating that he 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 undertaker 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 the land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner 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 undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker 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 undertaker 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 undertaker 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 him 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 undertaker shall pay him compensation for any loss sustained by him due to the severance of that part in addition to the value of the interest acquired.

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

**29.**—(1) 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 undertaker, whether compulsorily or by agreement; or

(b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act,

whichever is the sooner.

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

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

(4) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part I 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<sup>(a)</sup> (extinguishment of rights of statutory undertakers etc.) or paragraph 2 of Schedule 8 to this Order applies.

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

**30.**—(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 I of the 1965 Act as applied to the acquisition of land by article 20; and

(b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 21.

---

<sup>(a)</sup> 1990 c. 8.

(2) The powers conferred by article 24 shall cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph shall prevent the undertaker 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 IV

### MISCELLANEOUS AND GENERAL

#### Planning permission and supplementary matters

**31.**—(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<sup>(a)</sup> (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<sup>(b)</sup>, 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 III 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<sup>(c)</sup> 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

**32.**—(1) The undertaker 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 undertaker 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.

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

---

<sup>(a)</sup> S.I. 1969/17

<sup>(b)</sup> S.I. 1975/148

<sup>(c)</sup> S.I. 1999/1892

### **Power to operate and use railway**

**33.**—(1) A railway undertaker 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 I of the Railways Act 1993<sup>(a)</sup>.

### **Power to transfer undertaking**

**34.**—(1) Notwithstanding any restriction under any relevant enactment on the power of a relevant authority to dispose of land required for the purposes of its undertaking, the undertaker 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 undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker 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) (a “transfer agreement”) references in this Order to the undertaker 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 undertaker.

### **Power to charge fares**

**35.** A railway undertaker 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.

### **Maintenance of approved works etc.**

**36.**—(1) Where pursuant to regulations made under section 41 of the Transport and Works Act 1992<sup>(b)</sup> approval has been obtained from the Health and Safety Executive with respect to any works, plant or equipment (including vehicles) forming part of the railway authorised by this Order, such works, plant and equipment shall not be used in a state or condition other than that in which they were at the time that the approval was given unless any change thereto does not materially impair the safe operation of the railway so authorised.

(2) If without reasonable cause the provisions of paragraph (1) are contravened, the undertaker shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

---

<sup>(a)</sup> 1993 c. 43.

<sup>(b)</sup> 1992 c. 42.

(3) No proceedings shall be instituted in England and Wales in respect of an offence under this article except by or with the consent of the Health and Safety Executive or the Director of Public Prosecutions.

### **Agreements with Network Rail**

**37.**—(1) Without prejudice to article 36 above, the undertaker and Network Rail may with the consent of the Secretary of State enter into and carry into effect agreements with respect to the construction, maintenance, use and operation of -

- (a) any of the authorised works, or any part of those works; and
- (b) any works required for the purposes of or in connection with the authorised works;

by Network Rail or by the undertaker, or by the undertaker and Network Rail jointly.

(2) Any agreement made pursuant to the powers conferred by this article may contain such incidental, consequential or supplementary provisions as may be so agreed, including (but without prejudice to the generality of the foregoing) provisions -

- (a) with respect to the defraying of, or the making of contributions towards, the cost of such works or alteration or adaptation or the costs of such construction, maintenance, use and operation as are referred to in paragraph (1) above by the undertaker or by Network Rail or by the undertaker and Network Rail jointly; and
- (b) for the exercise by Network Rail, or by the undertaker, or by Network Rail and the undertaker jointly, of all or any of the powers and rights of Network Rail and the undertaker (as the case may be) in respect of any of the authorised works and any works required for the purposes thereof or in connection therewith.

(3) The exercise by the undertaker or Network Rail by the undertaker and Network Rail jointly, of any powers and rights under any enactment or contract pursuant to any such agreement as is authorised by paragraph (2) above shall be subject to all statutory and contractual provisions relating thereto as would apply if such powers and rights were exercised by the undertaker or Network Rail (as the case may be) alone, and accordingly such provisions shall with any necessary modifications, apply to the exercise of such powers and rights by the undertaker or Network Rail, or by the undertaker and Network Rail jointly, as the case may be.

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

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

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

(5) In this article "the undertaker" means the undertaker or a transferee other than Network Rail under a transfer agreement, within the meaning of article 34 (power to transfer undertaking) above.

## **Proceedings in respect of statutory nuisance**

**38.**—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990<sup>(a)</sup> (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 undertaker for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to the construction or maintenance of the authorised works; and
- (b) that the nuisance is attributable to the carrying out of works which are being carried out in accordance with a notice served under section 60, or a consent given under section 61 or 65 of the Control of Pollution Act 1974<sup>(b)</sup>; or
- (c) that the nuisance is a consequence of the construction, maintenance or use 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 undertaker for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to construction or maintenance of the authorised works.

## **Control of construction sites: appeals**

**39.**—(1) Sections 60 (control of noise on construction sites) and 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974 shall have effect, in relation to works carried out in exercise of the powers conferred by this Order, as if in subsection (7) of each section (appeal against failure to give consent or the giving of qualified consent) for the words "a magistrates' court" there were substituted the words "the Secretary of State".

## **Application of landlord and tenant law**

**40.**—(1) This article applies to any agreement for leasing to any person the whole or any part of the authorised works or the right to operate the same, and any agreement entered into by the undertaker 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.

---

<sup>(a)</sup> 1990 c. 43.

<sup>(b)</sup> 1974 c. 40.

(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.

### **Obstruction of construction of authorised works**

**41.** Any person who, without reasonable excuse, obstructs any person acting under the authority of the undertaker in setting out the lines of the scheduled works, or in constructing any authorised work or who interferes with, moves or removes any apparatus belonging to any such person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Trespass**

**42.—(1)** Any person who—

- (a) trespasses on any part of the railway; or
- (b) trespasses on any land of the undertaker 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**

**43.** A person who—

- (a) enters a factory, workshop or workplace in pursuance of the provisions of article 19 (protective works to buildings) or article 18 (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,

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 performing his duty in connection with the purposes for which he was authorised to enter the land.

### **Statutory undertakers etc.**

44. The provisions of Schedule 10 to this Order shall have effect.

### **Protective provisions**

45. The provisions of Schedule 11 to this Order shall have effect.

### **As to application of certain railway enactments**

46. — (1) Any enactment by which any railway or former railway of Network Rail comprised within the designated lands was authorised shall have effect subject to the provisions of this Order.

(2) Nothing in paragraph (1) above shall prejudice any express statutory provision for -

- (a) the protection of the owner, lessee or occupier of any property which is specifically designated property in such statutory provision; or
- (b) the protection or benefit of any public trustees or commissioners, corporation or other person, specifically named in such provision.

(3) In this article "designated lands" means any land shown on the works and land plans and described in the book of reference that is owned by Network Rail.

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

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

### **Service of notices**

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

- (a) by post; or
- (b) subject to paragraphs (5), (6), (7) and (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<sup>(a)</sup> as it applies for the purposes of this article, the proper address of any person in relation to the service on him of a notice or document under paragraph (1) is, if he has given an address for service, that address, and otherwise—

---

<sup>(a)</sup> 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, his last known address at the time of service.

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

- (a) addressing it to him 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 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 he 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) A person may revoke his consent to the use of electronic transmission 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 he shall—

- (a) give notice in writing or by electronic transmission revoking any consent given by him 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**

**49.** 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**

**50.** 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 for Transport

[The Transport and Works Act Orders Unit,  
Department for Transport]

200

# SCHEDULES

Article 4

## SCHEDULE 1

### THE SCHEDULED WORKS

COUNTY OF SUFFOLK

Borough of Ipswich

*Work No. 1* The construction of a railway comprising a new marshalling yard (approximately 830 metres in length) by the reconfiguration of the existing railway, commencing at a re-aligned junction approximately 50 metres east of London Road Bridge, proceeding thence in a generally south easterly direction and terminating at a new junction at a point approximately 200 metres west of the passenger railway platforms at Ipswich Station, the improvement of sidings and other railway infrastructure, the closure of the railway to Ipswich Lower Yard, and the relocation of railway plant and equipment.

Borough of Ipswich and Suffolk Coastal District, Parish of Westerfield

*Work No. 2* The construction of a new footbridge with steps and ramps over the Ipswich to Lowestoft railway line approximately 40 metres west of the existing level crossing and the conversion and improvement of the existing automatic half barrier level crossing on Westerfield Road (B1077), Westerfield, to a full barrier level crossing with closed circuit television.

Suffolk Coastal District, Parishes of Nacton, Levington and Stratton Hall, Trimley St Martin and Trimley St Mary

*Work No. 3* A railway (approximately 7150 metres in length) being a second railway line on a parallel alignment with the existing Felixstowe Branch Line railway commencing at a new junction with the Felixstowe Branch railway line approximately 140 metres west of mile post 78.5, proceeding thence on the southern side of the existing railway and terminating approximately 120 metres west of Trimley Level Crossing, including the replacement of the existing junction near Trimley Station with two crossovers.

*Work No. 4* The realignment of the existing automatic half barrier level crossing at Levington (Strattonhall Drift) to accommodate a second railway by widening the existing level crossing by approximately 4.5 metres southwards and the re-surfacing of the approaching roads either side of the level crossing.

*Work No. 5* The realignment of the existing automatic half barrier level crossing at Morston Hall (Morston Hall Road) to accommodate a second railway by widening the level crossing by approximately 4.5 metres southwards and the re-surfacing of the approaching roads on either side of the level crossing.

*Work No. 6* A road being a realignment of Grimston Lane commencing at a point 15 metres south of the existing junction of Thorpe Lane and Grimston Lane and continuing in an easterly direction towards a point on the existing alignment of Grimston Lane approximately 60 metres east of the existing junction of Thorpe Lane and Grimston Lane including the resurfacing of Grimston Lane to a point approximately 180 metres from the existing junction.

*Work No. 7* The realignment of the existing automatic half barrier level crossing at Thorpe Lane (adopted highway U3112) to accommodate a second railway by widening the existing level crossing

approximately 4.5 metres southwards and the re-surfacing of the approaching roads either side of the level crossing.

## ACQUISITION OF CERTAIN LAND

(1) <i>Area</i>	(2) <i>Number of land shown on deposited land plans</i>	(3) <i>Purpose for which land may be acquired</i>
COUNTY OF SUFFOLK		
Borough of Ipswich	4, 5, 6, 7, 8, 9  11  14, 15	Construction of railway (Work No. 3) and provision of worksite  Provision of access  Construction of footbridge (Work No. 2)
Suffolk Coastal District		
Parish of Westerfield	17, 18, 19, 20, 21, 22, 23  16	Modification of level crossing (Work No. 2) and worksite  Construction of footbridge (Work No. 2)
Parish of Nacton	25, 27, 28	Construction of railway (Work No. 3)
Parish of Levington and Stratton Hall	29, 30, 36, 37, 46, 47, 51  58, 64, 65  61, 62  68  69  71, 73, 74, 77, 83, 85, 86, 93, 94, 96, 100, 105, 106, 107  81	Construction of railway (Work No. 3)  Construction of railway (Work No. 3)  Modification of level crossing (Work No. 4)  Provision of access to culvert and construction of railway (Work No. 3)  Provision of access to culvert and construction of railway (Work No. 3)  Construction of railway (Work No. 3)  Modification to level
Parish of Trimley St Martin		

Parish of Trimley St Mary	91, 92	crossing (Work No. 5)
	89	Modification to street alignment (Work No. 6)
	112, 118, 120, 121, 122, 123, 124	Modification to level crossing (Work No. 7)
		Construction of railway (Work No. 3)

**STREETS SUBJECT TO ALTERATION OF LAYOUT AND  
STREETS SUBJECT TO STREET WORKS**

(1) <i>Area</i>	(2) <i>Street subject to street works</i>
COUNTY OF SUFFOLK	
Borough of Ipswich	Hadleigh Road, Ranelagh Road/Ipswich Yard
Suffolk Coastal District	
Parish of Westerfield	Westerfield Road
Parish of Levington and Stratton Hall	Bridge Road, Old Felixstowe Road, Strattonhall Drift, Footpath FP1
Parish of Trimley St Martin	Morston Hall Road, Grimston Lane, Old Felixstowe Road, Restricted Byway No. 28 (Gun Lane), Footpath FP1 (the Suffolk Coast and Heaths Path), Footpath FP8, Grimston Lane Footcrossing, Footpath FP28, Footpath FP29, Footpath FP30, Footpath FP33
Parish of Trimley St Mary	Gun Lane, Footpath FP2, Footpath FP3, Footpath FP4

**STREETS TO BE PERMANENTLY STOPPED UP****PART 1****STREETS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED**

(1) <i>Area</i>	(2) <i>Highway or part to be stopped up</i>	(3) <i>Extent of stopping-up</i>	(4) <i>New highway to be substituted for it</i>
COUNTY OF SUFFOLK  Suffolk Coastal District  Parish of Trimley St Martin	Grimston Lane  Restricted Byway No. 28 (Gun Lane) (Gun Lane crossing)	between points H1 and H2  between points FP3 and FP7	Diversion via Work No. 6  Diversion via points FP4, FP5, and FP6 to point FP7 and following diversion to be closed to the public for use by vehicles on the route of this diversion

**PART 2****STREETS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED**

(1) <i>Area</i>	(2) <i>Highway or part to be stopped up</i>	(3) <i>Extent of stopping-up</i>
COUNTY OF SUFFOLK  Suffolk Coastal District  Parish of Trimley St Martin	Footpath FP8 Trimley St Martin and Croft Footcrossing thereon  Grimston Lane Footcrossing	Permanently stopped up from point FP1 to point FP2 at the existing junction of FP8 with Strattonhall Drift  Permanently stopped-up between points FP3 and FP4

Note: unless the contrary is provided the stopping up of any street in the above tables shall include all associated footways, carriageways and verges.

**STREETS TO BE TEMPORARILY STOPPED UP OR  
SUBJECT TO TRAFFIC MANAGEMENT**

(1) <i>Area</i>	(2) <i>Street to be stopped up</i>	(3) <i>Extent of Temporary Stopping Up</i>
COUNTY OF SUFFOLK		
Suffolk Coastal District		
Parish of Levington and Stratton Hall	Footpath FP1 (Strattonhall)	Between points TF1 and TF2 for the duration of the construction of the works and to be temporarily diverted so as to run in a south easterly direction from point TF2 via an alignment following the limit of land to be acquired or used to point TF3 on Strattonhall Drift and thence via Old Felixstowe Road to point TF1
Parish of Levington and Stratton Hall and Parish of Trimley St Martin	Old Felixstowe Road	Closed to westbound traffic between points T1 and T2 for the duration of the construction of the works
Parish of Trimley St Martin	Footpath FP1 (Trimley St Martin), the Suffolk Coasts and Heaths Path	Between points TF4 and TF5 for the duration of the construction of the works
	Footpath FP33 (Trimley St Martin)	Between points TF7 and TF8 for periods not exceeding one week on any one occasion during the duration of the construction of the works
	Footpath FP29 and FP30 (Trimley St Martin) and No. 24 Footcrossing	Between points TF8 and FP9 for the duration of the construction of the works
Parish of Trimley St Martin and Parish of Trimley St Mary	Restricted Byway/Footpath FP28 (Trimley St Martin)/FP3 (Trimley St Mary)	Between points TF15 and TF16 for the duration of the construction of the works and to be temporarily diverted via points TF17, TF18, TF19, TF20, TF21 and TF22 and

Parish of Trimley St Mary	Restricted Byway No. 28 (Gun Lane)	thence via Keepers Lane, Gaymers Lane and High Road, Trimley St Mary to point TF15  Between points TF15 and TF16 for the duration of the construction of the works
	Footpath FP2 (Trimley St Martin)	Between points TF23 and TF24 for the duration of the construction of the works
	Footpath FP4 (Trimley St Mary)	Between points TF9 and TF14 for the duration of the construction of the works and to be temporarily diverted via points TF10, TF11, TF11, TF12 and TF13 to point TF14

Note: unless the contrary is provided the stopping up of any street in the above table shall include all associated footways, carriageways and verges

## ACCESS TO WORKS

(1) <i>Area</i>	(2) <i>Description of Access</i>
COUNTY OF SUFFOLK  Borough of Ipswich    Borough of Ipswich / Suffolk Coastal District  Parish of Westerfield  Parish of Nacton      Parish of Levington and Stratton Hall      Parish of Trimley St Martin	Access No. A 1 - Hadleigh Road  Access No. A 2 - Ranelagh Road  Access No. A 3 - Ranelagh Road      Access No. A 4 - Westerfield Road  Access No. A 5 - Old Felixstowe Road  Access No. A 6 - Old Felixstowe Road  Access No. A 7 - Bridge Road  Access No. A 8 - Bridge Road  Access No. A 9 - Strattonhall Drift  Access No. A 10 - Strattonhall Drift  Access No. A 11 - Old Felixstowe Road  Access No. A 12 - Morston Hall Road  Access No. A 13 - Morston Hall Road  Access No. A 15 - Thorpe Lane  Access No. A 16 - High Road, Trimley St Martin

**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 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<sup>(a)</sup> 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<sup>(b)</sup> as substituted by paragraph 4—

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

(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 land consisting”;
- (b) for the word “severance” there shall be substituted the words “right over 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 proposed”; and
- (d) for the words “part is” there shall be substituted the words “right 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 as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are to be read (according to the requirements of the particular context) as referring to, or as including references to—

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

---

<sup>(a)</sup> 1973 c. 26.

<sup>(b)</sup> 1965 c. 56.

(2) Without prejudice to the generality of sub-paragraph (1), Part I 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 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—

“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 his, 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—

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

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

The Felixstowe Branch Line and Ipswich Yard Improvement Order 200 (“the Order”) shall, in relation to that person, cease to authorise the purchase of the right 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),

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 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, it has power, exercisable in the like circumstances and subject to the like conditions, to enter for the purpose of exercising that right (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 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, subject to compliance with that section as respects compensation.

**SCHEDULE 8****LEVEL CROSSINGS****PART 1****LEVEL CROSSINGS ALTERED IN CONNECTION WITH THE WORKS**

(1) <i>Area</i>	(2) <i>Level Crossing to be altered</i>	(3) <i>existing level crossing order</i>	(4) <i>new level crossing</i>
COUNTY OF SUFFOLK			
Borough of Ipswich / Suffolk Coastal District Parish of Westerfield	Westerfield Level Crossing	The Railtrack Westerfield Level Crossing Order 1999 (coming into force 15 March 1999)	Full barrier level crossing with closed circuit television
Parish of Levington and Stratton Hall	Levington Heath Footcrossing  (FP1 Strattonhall)  Levington Level Crossing (Strattonhall Drift)	no existing order   The Railtrack Levington Level Crossing Order 1999 (coming into force 21 March 1999)	Widened footcrossing (by approximately 4.5 metres southwards), straightened with walkway surfaces  Widened automatic half barrier level crossing (by approximately 4.5 metres southwards), approaching roads resurfaced (skid resistant), additional signage
Parish of Trimley St Martin	Morston Hall Level Crossing  (Morston Hall High Road)  Thorpe Common Footcrossing  (FP1 Trimley St Martin)	The Railtrack (Morston Hall Level Crossing Order 1999 (coming into force 21 March 1999)  no existing order	Widened automatic half barrier level crossing (by approximately 4.5 metres southwards), approaching roads resurfaced  Widened footcrossing (by 4.5 metres southwards) with walkway surfaces, signs and repositioned

Parish of Trimley St Mary	Thorpe Lane level crossing (Thorpe Lane (adopted highway U3112))	The Railtrack Thorpe Lane Level Crossing Order 1999 (coming into force 21 March 1999) and The Railtrack Thorpe Lane Level Crossing (Variation) Order 1999 (coming into force 28 October 1999)	whistle boards Widened automatic half barrier level crossing (by approximately 4.5 metres southwards), widened pedestrian walkway, re-surfacing of the approaching roads
	Number 23 Footcrossing (FP33 Trimley St Martin)	no existing order	Widened footcrossing (by 4.5 metres southwards), straightened with walkway surfaces
	Number 24 Footcrossing (FP29 Trimley St Martin and FP30 Trimley St Martin)	no existing order	Widened footcrossing (by approximately 4.5 metres southwards), straightened with walkway surfaces and repositioned whistle boards
	Keeper's Lane Level Crossing (Bridleway 22 Trimley St Mary)	The Railtrack Keeper's Lane Level Crossing Order 1999 (coming into force 21 March 1999) and Authorisation of Traffic Signs (dated 9 March 1999) pursuant to sections 64 and 65 of Road Traffic Regulation Act 1984	Widened level crossing (by 4.5 metres southwards) with walkway surfaces
Trimley St Mary Level Crossing (Station Road/Cordy's Lane)	The Railtrack Trimley Level Crossing Order 1999 (coming into force 21 March 1999) and The Railtrack Trimley Level Crossing (Variation) Order 1999 (coming into force 21 November 1999)	Replacement of road panels	

**PART 2**

**LEVEL CROSSINGS TO BE STOPPED UP**

(1) <i>Area</i>	(2) <i>Level Crossing to be discontinued</i>	(3) <i>Footpath to be stopped up</i>	(4) <i>New way to be substituted</i>
COUNTY OF SUFFOLK  Suffolk Coastal District  Parish of Trimley St Martin	Croft footcrossing (FP8 Trimley St Martin)  Grimston Lane Footcrossing ("no public rights noted")  Gun Lane Level Crossing (UWG) (Road Used as Public Path 28)	FP8 Trimley St Martin between points FP2 and FP3    Road Used as Public Path 28 between points FP3 and FP7	No substitute    No substitute   Diversion via points FP4, FP5, and FP6 to point FP7 and following diversion to be closed to the public for use by vehicles on the route of this diversion

## LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) <i>Area</i>	(2) <i>Number of land shown on deposited plans</i>	(3) <i>Purpose for which land may be acquired</i>	(4) <i>Authorised work</i>
COUNTY OF SUFFOLK			
Borough of Ipswich	1, 2, 3	Provision of worksite	Work No. 1
Suffolk Coastal District	10, 12	Provision of access	Work No. 1
Parish of Westerfield	13, 24	Provision of worksite	Work No. 2
Parish of Nacton	26	Provision of worksite, vehicle turn around and construction area for fabrication of track turnouts	Work No. 3
Parish of Levington	31	Vehicle turnaround area, temporary stockpile spoil area, haul road	Work No. 3
	32, 33, 39, 40	Improvements for temporary access	Work No. 3
	34, 35	Temporary materials storage area	Work No. 3
	38	Haul road, area for earth moving equipment turnback/parking, spoil storage, road lorry loading/parking queueing and washdown area, site cabins, equipment storage and car parking (and access therefor)	Work No. 3
	41, 42, 43, 44, 45, 48, 49, 50	Temporary highway improvements	Work No. 3
	52	Haul road	Work No. 3
	53, 54	Provision of access, highway improvements	Work No. 3
	55	Provision of access, haul road, area for earth moving equipment turnback/parking, spoil storage, road lorry loading/parking queueing and washdown area, site cabins, equipment storage and car	Work No. 3

Parish of Stratton Hall	56, 57, 66	parking Haul road, vehicle turnaround and temporary soil stockpile area, area for earth moving equipment turnback/parking, spoil storage, road lorry loading/parking queueing and washdown area, site cabins, equipment storage and car parking and provision of access	Work No.3, Work No. 4
	59, 60, 63	Temporary highway improvements, road widening and reinforcement	Work No. 3, Work No. 4
	57	Provision of temporary footpath diversion	Work No. 3
	66	Haul road	Work No. 3
Parish of Trimley St Martin	67	Provision of access, temporary traffic regulation order	Work No. 3
	70, 72	Haul road	Work No. 3
	75	Haul road, vehicle turn around and temporary stockpile spoil area	Work No. 3
	76	Haul road, area for earth moving equipment turnback/parking, spoil storage, road lorry loading/parking queueing and washdown area, site cabins, equipment storage and car parking and provision of access	Work No.3
			Work No. 5
	78, 79, 80, 82	Temporary access improvements, road widening and reinforcement	Work No. 3 Work No. 5
	84	Haul road, area for earth moving equipment turnback/parking, spoil storage, road lorry loading/parking queueing and washdown area, site cabins, equipment storage and car parking and provision of access	Work No. 3
	87	Haul road, vehicle turnaround and fabrication of track turnouts area and provision of access	Work No. 3
Work No. 6			
88, 90	Highway improvement	Work No. 7 Work No. 6	

			Work No. 7
	95	Haul road, construction vehicle turnaround and temporary soil stockpile area	Work No. 3
	97, 98, 99	Provision of permanent replacement footpath	
	101, 102, 103, 104	Haul road	Work No. 3
	108	Area for earth moving equipment turnback/parking, spoil storage, road lorry loading/parking queueing and washdown area, site cabins, equipment storage and car parking and provision of temporary footpath diversion	Work No. 3
	109	Provision of temporary footpath diversion	Work No. 3
	110, 111	Provision of access, temporary highway improvements	Work No. 3
Parish of Trimley St Mary	113, 116, 117	Haul road, environmental protection	Work No. 3
	114, 115	Provision of temporary footpath diversion	Work No. 3
	119	Haul road and all terrain construction vehicle turnaround and fabrication of track turnouts	Work No. 3

**PROVISIONS RELATING TO STATUTORY UNDERTAKERS ETC.***Apparatus of statutory undertakers etc. on land acquired*

1.— (1) Sections 271 to 274 of the 1990 Act<sup>(a)</sup> (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 undertaker 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 undertaker 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) 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 undertaker compensation in respect of expenditure reasonably incurred by him, 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 sub-paragraph (1), as applied by that sub-paragraph, shall not have effect in relation to apparatus as respects which paragraph 2 or Part III of the 1991 Act<sup>(b)</sup> applies.

(6) In this paragraph—

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

“public utility undertakers” has the same meaning as in the Highways Act 1980<sup>(d)</sup>. Apparatus of statutory undertakers etc. in stopped up streets

<sup>(a)</sup> 1990 c. 8.

<sup>(b)</sup> 1991 c. 22.

<sup>(c)</sup> 2003 c. 21.

<sup>(d)</sup> 1980 c. 66.

2.— (1) Where a street is stopped up under article 8 (stopping up of streets) or article 9 (temporary stopping up of streets) of this Order 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 8 (stopping up of streets) or article 9 (temporary stopping up of streets) of this Order 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 undertaker shall—

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

#### *Railway and navigation undertakings*

3.— (1) Subject to the following provisions of this paragraph, the powers under article 7 (power to execute street works) of this Order to break up or open a street shall not be exercisable where the street, not being a highway maintainable at public expense (within the meaning of the Highways Act 1980)—

- (a) is under the control or management of, or is maintainable by, railway or tramway undertakers or a navigation authority; or
- (b) forms part of a level crossing belonging to any such undertakers or to such an authority or to any other person,

except with the consent of the undertakers or authority or, as the case may be, of the person to whom the level crossing belongs.

(2) Sub-paragraph (1) shall not apply to the carrying out under this Order of emergency works, within the meaning of Part III of the 1991 Act.

(3) A consent given for the purpose of sub-paragraph (1) may be made subject to such reasonable conditions as may be specified by the person giving it but shall not be unreasonably withheld.

(4) In this paragraph “navigation authority” means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary, harbour or dock.

Article 45

**SCHEDULE 11**  
**PROTECTIVE PROVISIONS**

**Blank Schedule**