

## **Statement of Case On behalf of the Environment Agency**

### **Rother Valley Railway proposed railway (Bodiam to Robertsbridge) Junction Order**

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#### **1. Introduction**

1.1 The Environment Agency is an executive non-departmental public body established under the Environment Act 1995. It is an adviser to Government with principal aims to protect and improve the environment, and to promote sustainable development. It plays a central role in delivering the environmental priorities of central government through its functions and roles. It is also an adviser to local decision makers in its role as a statutory consultee in respect of particular types of development, as listed in Schedule 4 of the Development Management Procedure Order 2015. For the purposes of this Transport and Works Act Order (TWAO) application, it is a statutory consultee.

1.2 The Environment Agency takes action to conserve and secure proper use of water resources, preserve and improve the quality of rivers, estuaries and coastal waters and groundwaters through pollution control powers and regulating discharge consents. We have regulatory powers in respect of waste management and remediation of contaminated land designated as special sites. We also encourage remediation of land contamination through the planning process.

1.3 The Environment Agency is the principal flood risk management operating authority. It has the power (but not a legal obligation) to manage flood risk from designated main rivers and the sea. The Environment Agency is also responsible for increasing public awareness of flood risk, flood forecasting and warning and has a general supervisory duty for flood risk management. The Environment Agency also has a strategic overview role for all flood and coastal erosion risk management.

1.4 The Environment Agency is the competent authority for England for the purposes of the Water Framework Directive, in conjunction with (as necessary) the Secretary of State for the Environment, Food and Rural Affairs. Regulation 3(1) Water Environment

(Water Framework Directive) (England and Wales) Regulations 2017 requires that the Secretary of State and the Environment Agency must exercise their relevant functions so as to secure compliance with the requirements of the Directive.

1.5 The Environment Agency also has statutory duties under the Environment Act 1995 (s6) to generally promote the conservation of fauna which are dependent on an aquatic environment to the extent it considers desirable.

1.6 We also issue Environmental Permits under the Environmental Permitting (England and Wales) Regulations 2016, which cover water discharge consenting, groundwater authorisations, radioactive substances regulation authorisations, waste permitting activities and flood risk activities.

## **2.0 Environment Agency's position on application**

2.1 On 25 May 2018 the Environment Agency lodged an objection to the proposal by Rother Valley Railway (the Applicant) for the Rother Valley Railway (Bodiam to Robertsbridge Junction) Order. Our letter is included as an annex to this report.

2.2 Our objection to the Order is due to significant concerns about the disapplication of legislative provisions as outlined in Part 1 – Sc5(1) (a), (b) and (c). The protective provisions in the draft Order do not provide protection equivalent to our permitting remit for the proposed works in and around the River Rother and the surrounding land in respect of flood risk and other environmental concerns, and we would request amendments be made.

2.3 In order to overcome our objection as set out in 2.2, we would request that the applicant accept the amendments to the protective provisions in Schedule 8, Part 3 of the draft Order.

2.4 The Bodiam to Robertsbridge Junction is located in the Rother Valley in East Sussex and the proposed railway runs through the floodplain for the River Rother. The River Rother is a main river as defined in Part IV of the Water Resources Act 1991 section 113 and managed by The Environment Agency. The river, and its banks, provide an important habitat for many species of fish and wildlife, including protected species of flora and fauna. The draft Order includes numerous structures including bridges and culverts, embankments and works to flood defences (not an exhaustive list). The River Rother, and the route of the reinstated railway line, extends through third party land where the applicant does not have permission to enter; therefore, thorough flood and ecological surveys and flood modelling have yet to be completed. We acknowledge that the Order is required to enable surveys and modelling to be undertaken.

## **3. The main areas of concern are as follows:**

3.1 We have been working with Rother Valley Railway since 2012 on the proposed reinstatement of the railway (Bodiam to Robertsbridge) Junction and have provided in depth pre-application advice as the planning application progressed. The planning permission was granted in March 2017, with 12 conditions set by The Environment Agency. These conditions include 5 pre-commencement conditions, which include the requirement for the applicant to complete thorough ecological and flood risk assessments, modelling and designs (not an exhaustive list) in advance of any work

commencing. At the time of the draft Order being submitted, the as built designs, surveys, final assessments and revised modelling had not been submitted due to the problems with access to third party land as outlined in 2.3.

3.2 Rother Valley Railway seeks to disapply certain legislation (set out in Part 1, section 5 of the draft Order). This includes the Environment Agency's environmental permitting regime for works in rivers etc. and also our byelaws. Rother Valley Railway have included suggested protective provisions within the draft Order. We have reviewed these and have submitted an amended version as an annex to this Statement of Case.

3.3 The amendments to the protective provisions (set out in Part 3 of Schedule 8 in the draft Order) represent the level of protection that we require in order to lift our objection to the disapplication of legislation as outlined in 3.2.

3.4 It is our understanding that if this Order is granted then the land set out to be compulsory purchased under this order would become land owned, operated and maintained by a railway undertaker. The exercise of the Environment Agency's powers and functions under the Water Resources Act 1991 are subject to Schedule 22 of the Water Resources Act 1991. Paragraph 1 of Schedule 22 states that:

*Nothing in any of the provisions of this Act conferring power on the [appropriate agency] to carry out any works shall confer power to do anything, except with the consent of the persons carrying on an undertaking protected by this paragraph, which, whether directly or indirectly, so interferes or will so interfere—*

*(a) with works or property vested in or under the control of the persons carrying on that undertaking, in their capacity as such; or*

*(b) with the use of any such works or property,*

*as to affect injuriously those works or that property or the carrying on of that undertaking.*

We are in discussion with the applicant on this matter and hope to have agreement on our access requirements in advance of the enquiry hearing for this Order. Map extracts showing our assets and the access required are included in the annex to this document.

3.5 Rother Valley Railway seek to include deemed approval within the protective provisions of the draft Order. This is contradictory to current legislation – Section 5, paragraph 15 of the Environmental Permitting (England and Wales) Regulations 2016 states

*If the regulator has not determined an application within the relevant period and the applicant serves a notice on the regulator which refers to schedule 5 paragraph 15 then the application is deemed to have been refused on the day on which the notice is served.*

In light of this we request that the protective provisions are amended as per our submitted version to include deemed refusal as set out in Part 3(17) of Schedule 8 of the draft Order.

#### **4. Conclusion**

4.1 We have submitted documents to support our case as an annex to this statement. If we are unable to resolve our concerns by means of amended protective provisions, we would maintain our objection to the disapplication of legislative provisions.

In respect of an agreement with the applicant to retain our permissive powers on land owned by a rail undertaker under schedule 22 of the Water Resources Act 1991; if no agreement can be reached with the applicant we would have to lodge a further objection to the compulsory purchase order where our access is restricted.

We would request that the Order is amended to address our concerns.

Secretary of State for Transport  
C/o Transport and Works Act Orders Unit  
General Counsel's Office  
Department for Transport  
Zone 1/18  
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London  
SW1P 4DR

**Our ref:** KT/2018/124176/01-L01  
**Your ref:** DG/19/03/18 TWAO  
**Date:** 24 May 2018

Dear Mr. Chris Grayling MP

**Proposed Rother Valley Railway (RVR) (Bodiam to Robertsbridge Junction) Transport and Works Act Order Application - Robertsbridge**

Thank you for consulting us on the above proposal. We have reviewed the Order for the proposed Bodiam to Robertsbridge Junction. We have significant concerns about the disapplication of legislative provisions as outlined in Part 1- Sc5. (1) (a), (b) and (c) and **object** to the above Transport and Works Act Order on this basis.

In previous correspondence with the Local Planning Authority and the Transport and Works Act Order Unit we outlined that there are further considerations that require additional evidence (our letter RE the Environmental Statement dated 9 June 2017 ref KT/2017/122923/01-L01)

- Demonstration that flood risk is not increased in agricultural land
- Demonstration that ecology will not be adversely affected

The applicant, Rother Valley Railway, is yet to satisfy these considerations.

**Disapplication of legislative provisions**

We **object** to the Disapplication of Legislative Provisions as specified Sc5. (1) (a), (b) and (c).

We do not consider that sufficient evidence has been produced in order to demonstrate that the proposed works will not create or exacerbate flood risk. The current Flood Risk Assessment (FRA) identifies increases in flood depths and it is therefore essential that further work is undertaken in the form of an appropriate flood storage compensation scheme to ensure that in the post-development scenario, there is, as a minimum, no adverse impact on flood risk compared to the baseline scenario.

We requested conditions of planning to this effect in our letter ref KT/2014/118770/03-L01 dated 19<sup>th</sup> December 2016 and would expect these conditions to be met in full before any Flood Risk Activity Permits (FRAPS) associated with the proposal could be properly considered.

Given the number of structures (bridges, culverts etc) that are integral to the scheme but

have yet to be fully assessed in the context of a site wide FRA, we are not in a position to approve the disapplication of FRAPS as this could lead to an increase in flood risk to adjacent land and property and have a significant impact on ecology. It is also essential that sufficient access is retained for essential maintenance and improvement works to main rivers and any structures therein.

To date ecological surveys have not been undertaken and therefore the impact of the development on surrounding biodiversity cannot be fully assessed. FRAPS are bespoke and so we will need to analyse surveys and mitigation at every required location in assessing the risks to the environment.

### **Discharge of Water**

We do not agree to the wording of Part 2 Sc16. (6) and wish to amend the clause to read *The Company must take steps to secure any water discharged into a watercourse or public sewer or drain under the powers conferred by this article is free from fine or coarse suspended solids (silty water), oil or matter in suspension.*

We welcome Part 2 Sc16c (7) EPR permit for discharges (7) *Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016.*

### **Access to Assets**

We have a number of sites that provide real time data for the abstraction management, flood warning systems, drought monitoring and regulation of watercourses, which may be impacted by proposed reinstatement and ancillary works of the RVR between Robertsbridge and Junction Road (B2244).

We welcome discussions at the earliest opportunity to decide how we can continue to have access rights for maintenance, installation and data gathering from our assets.

### **Informative**

Developers are reminded that it is their duty under planning law to ensure safe and sustainable developments and under separate environmental legislation to not cause or knowingly permit pollution of the environment, harm to human health or detriment to the amenity of the area around the development.

If any unexpected contamination is discovered during development the LPA may need to re-appraise the site proposals and re-consult us if there are risks to controlled waters identified.

We recommend that the applicant:

- Applies the risk-based framework set out in the Model Procedures for the Management of Land Contamination (CLR 11) and follows the guidance in that document so that the best decisions are made for the site,
- Refers to the Environment Agency guidance on requirements for land contamination reports
- Uses BS 10175 2001, Investigation of Potentially Contaminated Sites – Code of Practice as a guide to undertaking the desk study and site investigation scheme
- Uses MCERTS accredited methods for testing contaminated soils at the site, and
- Consult our website at [www.environment-agency.gov.uk](http://www.environment-agency.gov.uk) for further information about any permissions that may be required.

## **Pollution Prevention**

You are reminded that it is an offence under Regulation 38 of The Environmental Permitting (England and Wales) Regulations 2010 to cause or knowingly permit a water discharge activity or ground water activity. Care must be taken to ensure that neither the watercourse nor groundwater becomes polluted, particularly by, for example diesel fuel, petrol and oil from machinery. All fuels, oils and chemicals must be stored securely and any large containers left on site must be banded. Care should also be taken when filling machinery to ensure that diesel/petrol/oil is not spilt on the ground. Spillages must not be washed away, but absorbed by some medium and then removed from site to a suitable licensed waste facility. Any such incidents must be reported to the Environment Agency immediately (Emergency Tel No 0800 807060). Copies of the Environment Agency's Pollution Prevention Guidelines (PPG5) and (PPG6) are either attached for your information or if not available upon request.

Any waste generated in the course of the works must be disposed of in accordance with the provision of the Environmental Protection Act 1990. Persons carrying waste are required by law to register with the Environment Agency as a Waste Carrier (subject to certain exceptions). The deposit, keeping, treating or disposal of waste should only take place at premises licensed by the Environment Agency to receive the waste (subject to certain exceptions and exemptions). When you give waste to someone else, details of the transfer of waste should be described on a document called a Duty of Care Transfer Note.

If the waste contains any properties that are hazardous to health or the environment, the waste will be classed as 'Hazardous Waste' as defined in the Hazardous Waste Regulations 2005. These Regulations place specific requirements on the producer and carrier of such waste. Further information can be found on the Agency's website ([www.environment-agency.gov.uk](http://www.environment-agency.gov.uk)) or by contacting the National Customer Contact Centre on 03708 506506.

### **Please note**

It is conceivable that mitigation may also be required and warn that it may be needed on land not included in boundary of the Order.

### **Overcoming our objection**

As they stand, the Protective Provisions outlined in Schedule 8 Part 3 do not meet our requirements. For our objection to be lifted it is vital that the Protective Provisions provide the equivalent of our permitting remit for the proposed works in and around the River Rother and the surrounding land. Without the flexibility of extensive amendments we will maintain our objection; as the impact of flooding as a result of the railway cannot be quantified.

Please do not hesitate to contact me should you wish to discuss the above.

Yours sincerely



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STATUTORY INSTRUMENTS

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**201X No.[XXXX]**

**TRANSPORT AND WORKS, ENGLAND**

**TRANSPORT, ENGLAND**

**The Rother Valley Railway (Bodiam to Robertsbridge Junction)  
Order**

*Made* - - - - - \*\*\*

*Coming into force* - - - - - \*\*\*

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

[Objections to that application have been withdrawn.]

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

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

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

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

The Secretary of State, in exercise of the powers conferred by sections 1 and 5 of, and paragraphs 1 to 5, 7, 8, 10 to 13 and 15 to 17 of Schedule 1 to, the 1992 Act makes the following Order:—

## PART 1 PRELIMINARY

### Citation and commencement

1. This Order may be cited as the Rother Valley Railway (Bodiam to Robertsbridge Junction) Order 201[X] and comes into force on [ ] 201[X].

### Interpretation

2.—(1) In this Order—

“the 1845 Act” means the Railways Clauses Consolidation Act 1845<sup>(c)</sup>;

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

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

“the 1980 Act” means the Highways Act 1980<sup>(f)</sup>;

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981<sup>(g)</sup>;

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

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

(c) 1845 c. 20. (d) 1961 c. 33. (e) 1965 c. 56. (f) 1980 c. 66.

(g) 1981 c. 66

“the 1984 Act” means the Road Traffic Regulation Act 1984<sup>(a)</sup>

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

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

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

“authorised works” means the new railway and any other works authorised by this Order, or any part of them;

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

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

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

“the Company” means Rother Valley Railway Limited (Company number 02613553) of Robertsbridge Junction Station, Station Road, Robertsbridge, East Sussex, TN32 5DG;

“electronic transmission” means a communication transmitted—

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

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

“the existing railways” means the railways specified in Part 2 of Schedule 1 (the railway) together with all lands and works relating to the existing railways vested in the Company at the date this Order is made and held or used by the Company for the purposes of its railway undertaking;

“footpath” and “footway” have the same meanings as in the 1980 Act;

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

“KESR” means the Kent and East Sussex Railway Company Limited, a charitable company limited by guarantee (Registered charity no. 262481) of Tenterden Town Station, Station Road, Tenterden, Kent, TN30 6HE;

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

“limits of deviation” means the limits of deviation shown on the Order plans;

“limits of land for survey and investigation” means the limits of land of which entry may be taken for survey and investigation shown on the Order plans;

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

“maintenance” is to be construed accordingly;

“the new railway” means the railway specified in Part 1 of Schedule 1 together with all lands and works relating to that railway;

“Order land” means the land shown on the Order plans which is within the Order limits described in the book of reference;

“Order limits” means the limits of deviation and the limits of additional land to be acquired or used shown on the Order plans;

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

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

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

(a) 1984 c. 27.

(b) 1990 c. 8.

(c) 1991 c. 22. As amended by the Traffic Management Act 2004 c. 18.

“the railway” means the new railway and the existing railways;

“statutory undertaker” means—

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

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

“street” includes part of a street;

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

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

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

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

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

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

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

#### **Application of other railway legislation, etc.**

3.—(1) (The following provisions of the 1845 Act are incorporated in this Order— section 58(c) (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”; sections 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 83, 85 to 85E and Schedules 1 to 3 (minerals under railways), as respectively substituted and inserted by section 15 of the Mines (Working Facilities and Support) Act 1923(d); section 103(e) (refusal to quit carriage at destination);

section 105 (carriage of dangerous goods on railway), except for the words from “and if any person” to “for every such offence”; and section 145(f) (recovery of penalties).

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

(a) 1981 c. 67. (b)

2003 c. 21.

(c) There are amendments to section 58 that are not relevant to this Order.

(d) 1923 c. 20. Section 79A was amended by section 48(1)(c) of the Coal Industry Nationalisation Act 1946 (c. 59). Section 85C was amended by virtue of section 17(2)(a) of the Interpretation Act 1978 (c. 30).

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

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

“the company” means the Company;

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

“lease” includes an agreement for a lease;

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

“the railway” means any railway authorised to be constructed by this Order, the existing railways and any other authorised work;

“the special Act” means this Order; and

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

#### **Application of the 1991 Act**

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

- (a) they are of a description mentioned in any of the 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 carrying out street works) and any regulations made or code of practice issued or approved under those provisions apply (with the necessary modifications) in relation to the temporary stopping up, temporary alteration or temporary diversion of a street by the Company under the powers conferred by article 12 (temporary stopping up of streets) and the carrying out of works under article 10 (power to execute street works) whether or not the stopping up, alteration or diversion, or the carrying out of such works, constitutes street works within the meaning of that Act.
- (3) The provisions of the 1991 Act (a) referred to in paragraph (2) are— section 54(b) (advance notice of certain works), subject to paragraph (4); section 55(c) (notice of starting date of works), subject to paragraph (4); section 59(d) (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 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) have effect as if references in section 57 of that Act to emergency works included a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

- (a) Sections 54, 55, 57, 60, 68 and 69 were amended by section 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
- (b) As also amended by section 49(1) of the Traffic Management Act 2004.
- (c) As also amended by section 49(2) and 51(9) of the Traffic Management Act 2004.
- (d) As amended by section 42 of the Traffic Management Act 2004 (c.18)

#### **Disapplication of legislative provisions**

**5.—**(1) The following provisions do not apply in relation to any works executed under the powers conferred by this Order—

- (a) Regulation 12(1)(a) (environmental permit required for operating a regulated facility) of the Environmental Permitting (England and Wales) Regulations 2016(a) in relation to the carrying out of a relevant flood risk activity within the meaning of paragraph 3(1)(a), (b) or (c) of Schedule 25 to those Regulations (erection, alteration or repair of structures in, over or under a main river);
- (b) section 23 (prohibition on obstacles etc. in watercourses) of the Land Drainage Act 1991(b); and
- (c) the provisions of any byelaws made under, or having effect as if made under, section 66 (powers to make byelaws) of that Act, which require consent or approval for the carrying out of the works.

## **PART 2**

### **PRINCIPAL POWERS**

#### **Power to construct new railway**

**6.—**(1) The Company may construct and maintain the new railway.

(2) Subject to article 8 (power to deviate) the new railway may only be constructed in the lines or situations shown on the Order plans and in accordance with the levels shown on the Order sections.

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

- (a) electrical equipment and signalling works;
- (b) ramps, means of access, a passing loop, and a halt at Salehurst;
- (c) embankments, viaducts, aprons, abutments, retaining walls, wing walls, bridges, drainage and culverts;
- (d) works to install or alter the position of apparatus, including mains, sewers, drains and cables;
- (e) temporary works in the river Rother in connection with the construction of the new railway;
- (f) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
- (g) extension and strengthening of the wall to the north of the river Rother at Robertsbridge between points X and Y on the Order plans.

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

(5) Paragraphs (3) and (4) only authorise the carrying out or maintenance of works outside the limits of deviation if such works are carried out on—

- (a) land specified in columns (1) and (2) of Schedule 2 (acquisition of land for ancillary works) for the purpose specified in column (3) of that Schedule; or

(a) S.I. 2016/1154

(b) 1991 c. 59

- (b) land specified in columns (1) and (2) of Schedule 7 (land of which temporary possession may be taken) for the purposes specified in column (3) of that Schedule.

(6) The Company may, within the Order limits—

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

### **Power to maintain existing railways**

7. With effect from the date of this Order, the Company may maintain the existing railways in the lines and situations, and within the limits of deviation, shown on the Order plans, and in accordance with the levels shown on the Order sections.

### **Power to deviate**

8. In constructing or maintaining the railway, the Company may—

- (a) deviate laterally from the lines or situations shown on the Order plans to the extent of the limits of deviation for that work; and
- (b) deviate vertically from the levels shown on the Order sections—
  - (i) to any extent not exceeding 1.5 metres upwards; or
  - (ii) to any extent downwards as may be found to be necessary or convenient.

*Streets*

### **Power to alter layout etc. of streets**

**9.**—(1) Subject to paragraph (3), the Company may, for the purposes of constructing and maintaining any authorised work, alter the layout of any street within the Order limits and the layout of any street having a junction with such a street; and, without limitation on the scope of that power, the Company may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, or verge within the street;
- (b) alter the level or increase the width of any such kerb, footpath, footway, or verge;
- (c) reduce the width of the carriageway of the street; and (d) temporarily remove any road hump within the street.

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

(3) The powers conferred by paragraph (1) are not to be exercised without the consent of the street authority, but such consent must not be unreasonably withheld.

(4) If within 28 days of receiving an application for consent under paragraph (3) a street authority fails to notify the Company of its decision or refuses consent without giving any grounds for its refusal that street authority is deemed to have granted consent.

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

**10.**—(1) The Company may, for the purposes of the authorised works, enter upon so much of any of the streets specified in Schedule 3 (streets subject to street works) 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; and
- (d) 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 (3) of Schedule 8 (provisions relating to statutory undertakers, etc.).

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

### **Stopping up of street**

**11.**—(1) Subject to the provisions of this article the Company may, in connection with the carrying out of the authorised works, stop up Footpath S&R 31 between points P1 and P2 on sheet 3 of the Order plans.

(2) The street referred to in paragraph (1) is not to be wholly or partly stopped up under this article unless—

- (a) a new street has been constructed and substituted for it between points P1, P4 and P2 on sheet 3 of the Order plans to the reasonable satisfaction of the street authority and is open to use; or
- (b) a temporary alternative route for the passage of such persons as could have used the street to be stopped up is first provided and subsequently maintained by the Company, to the reasonable satisfaction of the street authority, between points P1, P3 and P2 on the Order plans until the completion and opening of the new street in accordance with subparagraph (a).

(3) Where Footpath S&R 31 has been stopped up under this article—

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



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

(5) This article is subject to paragraph 2 of Schedule 6 (provisions relating to statutory undertakers etc.) to this Order.

### **Temporary stopping up of streets**

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

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

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

(3) Without limitation on the scope of paragraph (1), the Company may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule 4 (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the works plans, in column (3) of that Schedule.

(4) The Company must not exercise the powers conferred by this article—

- (a) In relation to any street specified as mentioned in paragraph (3) without first consulting the street authority; and
- (b) In relation to any other street without the consent of the street authority which may attach reasonable conditions to any consent, but such consent must not be unreasonably withheld.

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

(6) If within 28 days of receiving an application for consent under paragraph (4)(b) a street authority fails to notify the Company of its decision or refuses consent without giving any grounds for its refusal that street authority is deemed to have granted consent.

### **Access to works**

**13.—**(1) The Company may, for the purposes of, or in consequence of, the authorised works—

- (a) form and lay out means of access, or improve existing means of access, in the locations marked A1 and A2 on sheet 3 of the deposited plans; and
- (b) with the approval of the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the Company reasonably requires for the purposes of the authorised works.

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

### **Agreements with street authorities**

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

- (a) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (b) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
- (c) the execution in the street of any of the works referred to in article 10 (power to execute street works).

(2) Such an agreement may, without limitation on the scope of paragraph (1)—

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

### **Level crossings**

**15.—**(1) The Company may construct the new railway so as to carry it on the level across the highways specified in Part 1 of Schedule 5 (level crossings).

(2) The Company may provide, maintain and operate at or near the level crossings referred to in paragraph (1) above such barriers or other protective equipment as the Secretary of State may approve in writing or as may be required through an Order under the Level Crossings Act 1983(a).

(3) The Company may in the exercise of the powers conferred by this article alter the level of any highway specified in Schedule 5.

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

(5) Any traffic sign placed pursuant to this article on or near a highway or other road to which the public has access will be treated for the purposes of section 64(4) of the 1984 Act as having been placed as provided by that Act.

(6) The following enactments will not apply to any level crossing authorised by this Order —

- (a) the Highway (Railway Crossings) Act 1839(a); and

(a) 1983 c.16

- (b) section 9 of the Railway Regulation Act 1842(b).

(7) In this article— “barrier”

includes gate;

“level crossing” means the place at which the railway crosses a highway on the level under the powers conferred by this article; and

“protective equipment” includes lights, traffic signs (within section 64(1) of the 1984 Act), manual, mechanical, automatic, electrical or telephonic equipment or other devices.

### *Supplemental powers*

### **Discharge of water**

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

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the Company under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(c).

(3) The Company must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The Company must not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and

- (b) where that person has been given the opportunity to supervise the making of the opening.

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

(6) (6) The Company must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under the powers conferred by this

article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016.

(8) If a person who receives an application for consent or approval fails to notify the Company of a decision within 28 days of receiving an application for consent under paragraph (3) or approval under paragraph (4)(a) that person is deemed to have granted consent or given approval, as the case may be.

(9) In this article—

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

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

**17.—**(1) The Company may for the purpose of this Order—

- (a) 1839 c. 45.
- (b) 1842 c. 55 (c)

1991 c.

56.

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

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

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

- (a) must, if so required, before or after entering the land produce written evidence of authority to do so including any warrant issued under paragraph (4); and
- (b) may not use force unless a justice of the peace has issued a warrant under paragraph (4) authorising the person to do so.
- (c) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

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

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

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

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

- (7) The number specified must be the number which the justice of the peace considers appropriate to achieve the purpose for which the entry and survey or valuation are required.
- (8) Any evidence in proceedings for a warrant under this article must be given on oath.
- (9) No trial holes are to be made under this article—
- (a) in a carriageway or footway without the consent of the highway authority; or
  - (b) in a private street without the consent of the street authority, but such consent must not be unreasonably withheld.
- (10) The Company must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.
- (11) If either a highway authority or a street authority which receives an application for consent fails to notify the Company of its decision within 28 days of receiving the application for consent—
- (a) under paragraph (9)(a) in the case of a highway authority; or
  - (b) under paragraph (9)(b) in the case of a street authority, that authority is deemed to have granted consent.

### PART 3

#### ACQUISITION AND POSSESSION OF LAND

*Powers of acquisition*

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

**18.**—(1) The Company may acquire compulsorily—

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

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

(2) This article is subject to paragraph (8) of article 22 (temporary use of land for construction of works).

#### **Application of Part 1 of the 1965 Act**

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

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

(2) Part 1 of the 1965 Act as so applied has effect with the following modifications.

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

(4) In section 4A(1)(b) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order), the three year period mentioned in section 4”, substitute “section 22 of the Transport and Works Act 1992 (validity of orders under section 1 or 3), the five year period mentioned in article

26 (time limit for exercise of powers of acquisition) of the Rother Valley Railway (Bodiam to Robertsbridge Junction) Order 201[X].”

(5) In section 11(1B) (power to enter on and take possession of land the subject of a notice to treat after giving the specified notice)

(a) in a case where the notice to treat relates only to the acquisition of an easement or other right over land, for “3 months” substitute “1 month”.

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

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

(b) in subsection (2), after “land” insert “under that provision”

(7) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 26 of the Rother Valley Railway (Bodiam to Robertsbridge Junction) Order 201[X](c)”.

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

(a) 1981 c. 67.

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

(c) S.I. 201[X]/XXXX

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

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

(b) “(2) But see article 21 (power to acquire air-space) only of the Rother Valley Railway (Bodiam to Robertsbridge Junction) Order 201[X], which excludes the acquisition of airspace only from this Schedule”; and

(c) after paragraph 29 insert—

## “PART 4

### INTERPRETATION

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under articles 22 (temporary use of land for construction of works) and 23 (temporary use of land for maintenance of works) of the Rother Valley Railway (Bodiam to Robertsbridge Junction) Order 201[X].”

### **Application of the Compulsory Purchase (Vesting Declarations) Act 1981**

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

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

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

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

(5) In section 5B(a) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 22 of the Transport and Works Act 1992 (validity of orders under section 1 or 3), the five year period mentioned in article 26 (time limit for exercise of powers of acquisition) of the Rother Valley Railway (Bodiam to Robertsbridge Junction) Order 201[X]”.

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

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

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

(9) “(2) But see article article 21 (power to acquire air-space only) of the Rother Valley Railway (Bodiam to Robertsbridge Junction) Order 201[X], which excludes the acquisition of airspace only from this Schedule”

(10) References to the 1965 Act in the 1981 Act are to be construed as references to that Act as applied to the acquisition of land under article 18 (power to acquire land) by article 19 (application of Part 1 of the 1965 Act).

### **Power to acquire airspace only**

**21.**—(1) The Company may acquire compulsorily so much of, or such rights in, the air-space over the land referred to in paragraph (1)(a) or (b) of article 18 (power to acquire land) as may be

- (a) As amended by paragraph 52(2) of Schedule 2 to the Planning (consequential
- (b) As amended by paragraph 52(2) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c.11) and paragraph 7 of Schedule 15 to the Housing and Planning Act 2016 (c.22).
- (c) As amended by paragraph 3 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).
- (d) As inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the Company acquires any part of, or rights in, the air-space over land under paragraph (1), the Company is not required to acquire an interest in any other part of the land. *Temporary possession of land*

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

**22.**—(1) The Company may, in connection with the carrying out of the authorised works—

- (a) enter on and take temporary possession of—
  - (i) the land specified in columns (1) and (2) of Schedule 7 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the authorised works specified in column (4) of that Schedule; and
  - (ii) subject to paragraph (11), any other Order land in respect of which no notice of entry has been served under section 11(a) (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the Compulsory Purchase (Vesting Declarations) Act 1981;
- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
- (d) construct any permanent works specified in relation to that land in column (3) of Schedule 7 or any mitigation works on that land.

(2) Not less than 28 days before entering on and taking temporary possession of land under this article the Company must serve notice of the intended entry on the owners and occupiers of the land.

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

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

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

- (a) restore the existing pond within plot 76;
- (b) replace a building removed under this article; or
- (c) restore the land on which any works have been constructed under paragraph (1)(d).

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

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

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

(7) Without affecting article 41 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2)(a) (further provision as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5).

(8) The powers of compulsory acquisition of land conferred by this Order do not apply in relation to the land referred to in paragraph (1)(a)(i).

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

(10) Section 13(b) (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of article 0 (application of Part 1 of the 1965 Act).

(11) Paragraph (1)(a)(ii) does not authorise the Company to take temporary possession of any land which it is not authorised to acquire under article 0 (power to acquire land).

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

**23.—**(1) Subject to paragraph (2), at any time during the maintenance period relating to the new railway, the Company may—

- (a) enter upon and take temporary possession of any Order land if such possession is reasonably required for the purpose of maintaining the railway 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) does not authorise the Company to take temporary possession of—

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

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

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

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

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

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

(8) Without affecting article 41 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2) (further provision as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage arising from

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

(b) As amended by sections 62(3) and 139 of, and paragraphs 27 and 28 of Schedule 13, and Part 3 of Schedule 23, to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

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

(10) Section 13 (refusal to give possession to the acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of article 0 (application of Part 1 of the 1965 Act).

(11) In this article "the maintenance period" in relation to the new railway means the period of 5 years beginning with the date on which it is opened for use. *Compensation*

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

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

- (a) any interest in land;
- (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.

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

**25.—**(1) Subject to paragraph (5), all private rights of way over land subject to compulsory acquisition under this Order are extinguished—

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

(2) Subject to paragraph (5), all private rights of way over land owned by the Company which, being within the limits of land which may be acquired shown on the Order plans, is required for the purposes of this Order are extinguished on the appropriation of the land for any of those purposes by the Company.

(3) Subject to paragraph (5), all private rights of way over land of which the Company takes temporary possession under this Order are suspended and unenforceable for as long as the Company remains in lawful possession of the land.



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

(5) This article does not apply in relation to any right of way to which section 271 or 272(a) of the 1990 Act (extinguishment of rights of statutory undertakers etc.) or paragraph 2 of Schedule 6 (provisions relating to statutory undertakers etc.) applies.

(a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14, of and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measures 2006, sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307

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

any notice given by the Company before—

- (i) completion of the acquisition of;
- (ii) the Company's appropriation of;
- (iii) the Company's entry onto; or
- (iv) the Company's taking temporary possession of, the land, that any or all of those paragraphs do not apply to any right of way specified in the notice; and

(b) any agreement which makes reference to this article made (whether before or after any of the events mentioned in sub-paragraph (a) and before or after the coming into force of this Order) between the Company and the person in or to whom the right of way in question is vested or belongs.

(7) If any such agreement as is mentioned in sub-paragraph (6)(b) is expressed to have effect also for the benefit of those deriving title from or under the person in or to whom the right of way in question is vested or belongs, it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

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

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

- (a) no notice to treat is to be served under Part 1 of the 1965 Act as applied to the acquisition of land by article 19 (application of part 1 of the 1965 Act); and
- (b) no declaration is to be executed under section 4 of the 1981 Act as applied by article 20 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)(b).

(2) The powers conferred by article 22 (temporary use of land for construction of works) shall cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph shall prevent the Company remaining in possession of land after the end of that period, if the land was entered and possession of it was taken before the end of that period.

## **PART 4**

### **MISCELLANEOUS AND GENERAL**

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

- (a) that the nuisance relates to premises used by the Company for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to the authorised works and that the nuisance is attributable to the carrying out of the authorised works in accordance with a notice served under section 60 (control of noise on

- (a) Section 272 was amended by paragraphs 103(1) and (2) of Schedule 17 to the Communications Act 2003 (c. 21).
- (b) 1981 c. 66.
- (c) 1990 c.43
- (d) Section 79(1) was amended by section 2(2) of the Noise and Statutory Nuisance Act 1993, section 120 of, and paragraph 2(a) of Schedule 17 and paragraph 89(2) of Schedule 22 to, the Environment Act 1995, sections 101(2) and 102(2) of the Clean Neighbourhoods and Environment Act 2005 (c. 16) and sections 109(2), 110(2), 111(2) and 112(2)(a) of the Public Health etc. (Scotland) Act 2008 (asp. 5).

construction site), or a consent given under section 61 (prior consent for work on construction site) of the Control of Pollution Act 1974(a); or

(b) is a consequence of the operation of the railway and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the Company for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works.

### **Power to lop trees overhanging the authorised works**

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

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

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

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

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

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

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

### **Power to transfer undertaking**

**30.**—(1) The Company may—

- (a) transfer to KESR its right to construct, maintain, use or operate the railway, including the authorised works (or any part of them), and such related statutory rights as may be agreed between the Company and KESR; or
- (b) grant to KESR for a period agreed between the Company and KESR the right to construct, maintain, use or operate the railway, including the authorised works (or any part of them) and such related statutory rights as may be so agreed; on such terms as may be agreed between the Company and KESR.

(2) The Company may, with the consent of the Secretary of State—

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

(a) 1974 c.40

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

(3) Where an agreement has been made by virtue of paragraphs (1) or (2) references in this Order to the Company include references to KESR or to the transferee or the lessee, as the case may be.

(4) The exercise of the powers conferred by any enactment by any person in pursuance of any transfer or grant under paragraphs (1) or (2) are subject to the same restrictions, liabilities and obligations as would apply under this Order if those powers were exercised by the Company.

(5) Upon any transfer or grant to KESR in accordance with paragraph (1), any bye-laws of KESR are to apply to the railway as they apply to the existing railway undertaking of KESR.

### **Power to charge fares**

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

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

**32.** This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the railway or the right to operate the same; and
- (b) any agreement entered into by the Company with any person for the construction, maintenance, use or operation of the railway, 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 is to be taken to prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law is to apply in relation to the rights and obligations of the parties to any lease granted by or under any 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**

**33.** Any person who, without reasonable excuse—

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

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

### **Removal of obstructions**

**34.—**(1) If any obstruction is caused to trains using the railway by a vehicle waiting, unloading, or breaking down on any part of the railway, the person in charge of the vehicle must immediately

remove it and if that person fails to do so, the Company may take all reasonable steps to remove the obstruction and may recover the expenses reasonably incurred in doing so from—

- (a) any person by whom the vehicle was put or left so as to become an obstruction to trains, or
- (b) any person who was the owner of the vehicle at that time and who does not demonstrate that the vehicle was so put or left without the owner's knowledge or consent.

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

- (a) any person who was in charge of the vehicle at the time the load fell from it; or
- (b) any person who was the owner of the vehicle at that time and who does not demonstrate that the vehicle was in the place at which the load fell from it without the owner's knowledge or consent.

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

### **Trespass**

**35.**—(1) Any person who—

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

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

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

### **Saving for highway authorities**

**36.** Nothing in this Order affects any power of a highway authority to widen, alter, divert or improve any highway along which the railway is laid.

### **Statutory undertakers etc.**

**37.** The provisions of Schedule 6 (provisions relating to statutory undertakers etc.) have effect.

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

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

(a) 1994 c. 22.

## **Service of notices**

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

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

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

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978<sup>(a)</sup> as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

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

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

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

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is taken to be fulfilled where the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission either in writing or by electronic transmission.

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

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

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

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

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

## **Protection of interests**

**40.** Schedule 8 (protection of interests) has effect.

<sup>(a)</sup> 1978 c.30.

**No double recovery**

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

**Arbitration**

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

Signed by authority of the Secretary of State

Head of the Transport and Works Act Orders Unit Date

*Natasha Kopala*  
Department for Transport

# SCHEDULES

## SCHEDULE 1 THE RAILWAY

Articles 8 and 9

### PART 1 THE NEW RAILWAY

#### **In the county of East Sussex—**

Railway No. 3— A railway 3421 metres in length, commencing at a junction with Railway No. 2 on the western side of Northbridge Street and terminating at a junction with Railway No. 1 on the eastern side of the B2244 Road.

### PART 2 THE EXISTING RAILWAYS

#### **In the county of East Sussex—**

Railway No.1— A railway 1165 metres in length, commencing at a junction with Railway No. 3 at its termination and terminating at its junction with the Kent and East Sussex Railway 225 metres west of Bodiam Station.

Railway No. 2— A railway 814 metres in length, commencing at a point 20 metres north of Station Road and terminating at its junction with Railway No. 3 on the western side of Northbridge Street.

## SCHEDULE 2 ACQUISITION OF LAND FOR ANCILLARY WORKS

Articles 6 and 18

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land on land plans</i>	<i>(3)</i> <i>Purposes for which land may be acquired</i>
County of East Sussex District of Rother	98	Provision of environmental mitigation works

## SCHEDULE 3 STREETS SUBJECT TO STREET WORKS

Article 10

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to street works</i>
County of East Sussex District of Rother	Northbridge Street
County of East Sussex District of Rother	A21 London Road
County of East Sussex District of Rother	B2244 Junction Road
County of East Sussex District of Rother	Footpath S&R 31

County of East Sussex District of Rother	Bridleway S&R 36b
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## SCHEDULE 4

Article 12

### STREETS TO BE TEMPORARILY STOPPED UP

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
County of East Sussex District of Rother	Northbridge Street/The Clappers	Between T1 and T2
County of East Sussex District of Rother	A21 London Road	Between T3 and T4
County of East Sussex District of Rother	Bridleway S&R 36b	Between points T5 and T6
County of East Sussex District of Rother	B2244 Junction Road	Between points T8 and T9

## SCHEDULE 5

Article 15

### LEVEL CROSSINGS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Road</i>
County of East Sussex District of Rother	Northbridge Street
County of East Sussex District of Rother	A21 London Road
County of East Sussex District of Rother	Bridleway S&R 36b
County of East Sussex District of Rother	B2244 Junction Road

## SCHEDULE 6

Article 10 and 37

### PROVISIONS RELATING TO STATUTORY UNDERTAKERS ETC.

1.—(1) Sections 271 to 274(a) (extinguishment of rights of statutory undertakers etc.) of the 1990 Act apply in relation to any land acquired or appropriated by the Company under this Order subject to the following provisions of this paragraph: and all such other provisions of that Act as apply for the purposes of those provisions (including sections 275 to 278, which contain provisions consequential on the extinguishment of any rights under sections 271 and 272, and

(a) Section 272 to 274 were amended by paragraph 103(1) and (2) of Schedule 17 to the Communications Act 2003 (c. 21). sections 279(2) to (4), 280 and 282(a), which provide for the payment of compensation) 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 is entitled to recover from the Company compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.



(4) Sub-paragraph (3) does not apply in the case of the removal of a public sewer but where such a sewer is removed in pursuance of such a notice or order as is mentioned in that paragraph, any person who is—

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

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

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

(6) In this paragraph—

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

“public utility undertakers” has the same meaning as in the Highways Act 1980**(c)**. *Apparatus of statutory undertakers etc. in stopped up streets*

**2.—**(1) Where a street is stopped up under article 11 (stopping up of street) any statutory utility whose apparatus is under, in, upon, along or across the street has 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 11, any statutory utility whose apparatus is under, in, upon, over, along or across the street may, and if reasonably requested to do so by the Company must—

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

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

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

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

(b) 2003 c. 21.

(c) 1980 c. 66

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the Company, or, in default of agreement, is not determined by arbitration to be necessary, then. If it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this paragraph would be payable to the statutory utility by virtue of sub-paragraph (3) is to 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 is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint or cable is agreed, or is determined to be necessary, the consequential provisions of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.
- (6) An amount which apart from this 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 subparagraph (4) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.
- (7) Sub-paragraphs (3) to (6) do not apply where the authorised works constitute major transport works for the purposes of Part 3 of the 1991 Act, but instead—
- (a) the allowable costs of the relocation works are to be determined in accordance with section 85 (sharing of cost of necessary measures) of that Act and any regulations for the time being having effect under that section; and
- (b) the allowable costs are to be borne by the Company and the statutory utility in such proportions as may be prescribed by any such regulations.
- (8) In this paragraph—
- “apparatus” has the same meaning as in Part 3 of the 1991 Act;
- “relocation works” means works executed, or apparatus provided, under sub-paragraph (2); and
- “statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in paragraph 1(6).

## SCHEDULE 7

Article 22

### LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on the deposited plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised works</i>
County of East Sussex District of Rother	16, 45, 56, 104, 107, 108, 122, 123	Worksite and access for construction of the authorised works	Construction of new railway
County of East Sussex District of Rother	22, 23, 28, 29, 38, 46, 47	Worksite and access for construction of authorised works	Construction of new railway
County of East Sussex District of Rother	67	Worksite and provision of farm access over existing drain	Construction of new railway
County of East Sussex District of Rother	69, 70	Worksite and provision of mounting blocks	Construction of new railway
County of East Sussex District of Rother	87, 93, 109	Provision of farm access	Mitigation works

## SCHEDULE 8

### PROTECTIVE PROVISIONS

Article 40

#### PART 1

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

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

2. The provisions of paragraph 1 of Schedule 6 (provisions relating to statutory undertakers etc.), in so far as they relate to the removal of apparatus, do not apply in relation to apparatus to which this Part of this Schedule applies.

3. In this Part of this Schedule—

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

“apparatus” means—

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

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

(a) 1989 c. 29.

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

“functions” includes powers and duties;

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

“undertaker” means—

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

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

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

5. Regardless of any provision in this Order or anything shown on the land plans, the Company must not acquire any apparatus otherwise than by agreement.

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

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

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

(4) Any alternative apparatus to be constructed in land of the Company under this Part of this Schedule is to be constructed in such manner and in such line or situation as may be agreed between the undertaker in question and the Company or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(5) The undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 42 (arbitration), and after the grant to the undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the Company to be removed under the provisions of this Part of this Schedule.

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

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

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

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the Company affords to an undertaker facilities and rights for the construction and maintenance in land of the Company of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the Company and the undertaker in question or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

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

- (a) give effect to all reasonable requirements of the Company for ensuring the safety and efficient operation of the railway and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the Company or the traffic on the railway; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or along the railway for which the alternative apparatus is to be substituted.

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

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

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

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

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

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

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

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

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

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

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

- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the Company or, in default of agreement, is not determined by arbitration in accordance with article 42 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

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

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

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

**10.—**(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 6(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of an undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any undertaker, the Company must—

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

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

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

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

## PART 2

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

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

(2) In this Part of this Schedule—

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system are to be construed in accordance with paragraph 1(3A) of that code;

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

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

“electronic communications code network” means—

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

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

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

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works, or other property of an operator); or
- (b) there is any interruption in the supply of the service provided by an operator,

the Company must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and must—

- (i) make reasonable compensation to an operator for loss sustained by it; and
- (ii) indemnify an operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, an operator by reason, or in consequence of, any such damage or interruption.

<sup>(a)</sup> See section 106.

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

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

(4) Any difference arising between the Company and the operator under this paragraph is to be referred to and settled by arbitration under article 42 (arbitration).

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

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

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

### PART 3

#### FOR THE PROTECTION OF DRAINAGE AUTHORITIES AND THE ENVIRONMENT AGENCY

**16.—**(1) The following provisions of this Part of this Schedule apply for the protection of the drainage authority unless otherwise agreed in writing between the Company and the drainage authority.

(2) In this Part of this Schedule—

“access route” means a route accessible by plant machinery that is a minimum of 3m wide and accessible at all times

“the Agency” means the Environment Agency;

“a category 1 specified work” means so much of any permanent or temporary work or operation authorised by this Order (which includes, for the avoidance of doubt, any dredging and any geotechnical investigations that may be undertaken) as consists of—

- (a) erecting any structure (whether temporary or permanent) in, over or under a main river if the work is likely to affect any drainage work which is or includes a main river or the volumetric rate of flow of water in or flowing to or from any main river;
- (b) the carrying out of any work of alteration or repair of any structure (whether temporary or permanent) in, over or under a main river if the work is likely to affect the flow of water in the main river or to affect any drainage work;
- (c) erecting or altering any structure (whether temporary or permanent) designed to contain or divert the floodwaters of any part of a main river; or
- (d) any work or operation that is in, on, under, over or within 8 metres of a drainage work which is or includes a main river or is otherwise likely to affect any such drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
- (e) any work likely to affect the flow, purity or quality of water in any watercourse or other surface waters or groundwater;
- (f) any work or operation likely to cause obstruction to the free passage of fish or damage to any fishery;
- (g) any work or operation likely to affect the conservation value of the main river and habitats in the immediate vicinity;

“a category 2 specified work” means any of the following—

- (a) erecting any mill dam, weir or other like obstruction to the flow of any ordinary watercourse, or raising or otherwise altering any such obstruction;
- (b) erecting a culvert in any ordinary watercourse;
- (c) altering a culvert in a manner that would be likely to affect the flow of any ordinary watercourse; or
- (d) altering, removing or replacing a structure or feature designated by a local drainage authority under Schedule 1 to the Flood and Water Management Act 2010(a);

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

“the drainage authority” means—

- (a) in relation to a category 1 specified work, the Agency;
- (b) in relation to a category 2 specified work, the drainage board concerned within the meaning of section 23 of the Land Drainage Act 1991(b).

“drainage work” means any watercourse and includes any land which provides or is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring; and any ancillary works constructed as a consequence of works carried out for drainage purposes.



“the fishery” means any waters containing fish and fish in, or migrating to or from, such waters and the spawn, habitat or food of such fish;

“a main river” and “ordinary watercourse” have the meanings given by respectively the Water Resources Act 1991(c) and the Land Drainage Act 1991;

“plans” includes but is not limited to sections, drawings, specifications and method statements;

‘protective work’ means any works put in place to safeguard any drainage work against damage, to secure its efficiency for flood defence purposes and to provide environmental protection in line with 18(a),(b) and (c);

“specified work” means a category 1 specified work or a category 2 specified work.—

**17.—**(1) Before beginning to construct any protective works or specified work, the Company must submit to the drainage authority plans of the protective works or specified work and such further particulars available to it as the drainage authority may within 28 days of the receipt of the plans reasonably require.

(2) Any such protective works or specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority, or determined under paragraph 27.

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

(a) must not be unreasonably withheld;

(b) is deemed to have been refused if it is neither given nor refused within 2 months of the receipt of the plans for approval or where further particulars are submitted under sub paragraph (1) within 2 months of the submission of those particulars and, in the case of a refusal, accompanied by a statement of the grounds of refusal; and

(c) may be given subject to such reasonable requirements as the drainage authority may make for the protection of any drainage work, fishery, aquatic wildlife, water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties or the Agency’s use of any access route.

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

**18.** Without limitation on the scope of paragraph 17, the requirements which the drainage authority may make under that paragraph include conditions requiring the Company at its own expense to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

(a) to safeguard any drainage work against damage; or

(b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased, by reason of any specified work;

(c) to provide environmental protection for the aquatic wildlife.

**19.—**(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the drainage authority under paragraph 18, must be constructed—

(a) 2010 c. 29

(b) 1991 c. 59 (c)  
1991 c.

57

(a) Without unnecessary delay in accordance with the plans approved or settled under this Part of this Schedule; and

(b) to the reasonable satisfaction of the drainage authority,

and an officer of the drainage authority is entitled to watch and inspect the construction and operation of such works.

(2) The Company must give to the drainage authority not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If the Agency reasonably requires, the Company must construct all or part of the protective works so that they are in place prior to construction of any specified works.

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

(5) Subject to sub-paragraph (5) and paragraph 23, if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served upon the Company, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the drainage authority may execute the works specified in the notice and any expenditure incurred by it in so doing is recoverable from the Company.

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

(7) If by reason of construction of the specified work the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the Company must provide such alternative means of access to allow the Agency to maintain the flood defence or use the equipment no less effectively than before the obstruction within 24 hours of the Company becoming aware of such obstructions.

**20.—**(1) Subject to sub-paragraph (5) the Company must from the commencement of the construction of the protective works and the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the Company for the purposes of or in connection with the protective works and the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

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

(3) Subject to paragraphs 20 and 24, if, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under subparagraph (2) on the Company, the Company has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the drainage authority may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the Company.

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

(5) This paragraph does not apply to—

- (a) drainage works which are vested in the drainage authority, or which the drainage authority or another person is liable to maintain and is not precluded by the powers of the Order from doing so; and

- (b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part of this Schedule.

21. Subject to paragraph 24, if by reason of the construction of any **protective works** or specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the Company to the reasonable satisfaction of the drainage authority and if the Company fails to do so, the drainage authority may make good the same and recover from the Company the expense reasonably incurred by it in so doing.

22.—(1) The Company must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction **or maintenance** of any **protective or** specified work.

(2) If by reason of—

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

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

(3) Subject to paragraph 24, if within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the Company fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and may recover from the Company the expense reasonably incurred by it in doing so.

(4) Subject to paragraph 24, in any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the Company the reasonable cost of so doing provided that notice specifying those steps is served on the Company as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

**23.—(1) The Company must take all such measures as may be reasonably practicable to prevent any impacts to aquatic wildlife during the construction of any protective or specified work.**

**(2) If by reason of—**

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

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

**(3) Subject to paragraph 24, if within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to aquatic wildlife, the Company fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and may recover from the Company the expense reasonably incurred by it in doing so.**

**(4) Subject to paragraph 24, in any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to aquatic wildlife is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the Company the reasonable cost of so doing provided that notice specifying those steps is served on the Company as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.**

**24. Nothing in paragraphs 19(4), 20(3), 21, 22(3) and (4) or 23(3) and (4) authorises the drainage authority to execute works on or affecting an operational railway forming part of the Company's**

undertaking without the prior consent in writing of the Company such consent not to be unreasonably withheld or delayed.

**25.** The Company must indemnify the drainage authority in respect of all costs, charges and expenses which the drainage authority may reasonably incur or have to pay or which it may sustain—

- (a) in the examination or approval of plans under this Part of this Schedule;
- (b) in the inspection of the construction **or operation** of the specified works or any protective works required by the drainage authority under this Part of this Schedule.
- (c) **The carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works or any protective works ; or**
- (d) **Any act or omission of the Company its employees, contractors or agents or others whilst engaged upon the construction or maintenance of the authorised development or dealing with any failure of the authorised development.**

**26.—**(1) Without affecting the other provisions of this Part of this Schedule, the Company must indemnify the drainage authority from all claims, demands, proceedings, costs, charges, penalties, damages, expenses and losses, which may be made or taken against, recovered from, or incurred by, the drainage authority by reason of—

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

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

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

**27.** The fact that any work or thing has been executed or done by the Company in accordance with plans approved by the drainage authority, or to the drainage authority's satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the Company from any liability under the provisions of this Part of this Schedule.

**28.** Any dispute arising between the Company and the drainage authority under this Part of this Schedule, if the parties agree, is to be determined by arbitration under article 42 (arbitration), but otherwise is to be determined by the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Transport acting jointly on a reference to them by the Company or the drainage authority, after notice in writing by one to the other.

## **EXPLANATORY NOTE**

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

This Order authorises the Company to construct the new railway and maintain the new and existing railways in East Sussex from the point at which the existing Kent and East Sussex Railway terminates at Bodiam to a new terminus at Robertsbridge Junction station in Robertsbridge.

The Order authorises level crossings across Northbridge Street and the A21 at Robertsbridge, the B2244 at Udiam and across one footpath and one combined footpath and bridleway.

The Order also authorises the acquisition of land and rights in land, and the use of land, for this purpose.

Copies of the Order plans and sections and the book of reference referred to in the Order may be inspected at the offices of Rother Valley Railway Limited at Robertsbridge Junction Station, Robertsbridge, East Sussex, TN32 5DG





