

[202X No.]

TRANSPORT AND WORKS, ENGLAND

TRANSPORT, ENGLAND

**The Network Rail (Cambridge South Infrastructure
Enhancements) Order 202[X]**

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^(a) for an Order under sections 1 and 5 of the Transport and Works Act 1992^(b) (“the 1992 Act”).

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[The Secretary of State, having considered the objections made and not withdrawn and the report of the person who held the inquiry, has determined to make an Order giving effect to the proposals comprised in the application with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

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

[The Secretary of State, in exercise of the powers conferred by sections 1 and 5 of, and paragraphs 1 to 5, 7, 8, 10, 11 and 15 to 17 of Schedule 1 to, the 1992 Act makes the following Order:—]

(a) S.I. 2006/1466, as amended by S.I. 2010/439, S.I. 2011/556, S.I. 2011/2085, S.I. 2012/147, S.I. 2012/1658, S.I. 2012/2590, S.I. 2013/755, S.I. 2014/469, S.I. 2015/627, S.I. 2017/979 and S.I. 2017/1070.

(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.

PART 1

PRELIMINARY

Citation and commencement

1.This Order may be cited as the Network Rail (Cambridge South Infrastructure Enhancements) Order 202[X] and comes into force on [xxxxxx].

Interpretation

2.—(1) In this Order:—

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

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

“the 1980 Act” means the Highways Act 1980(c);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(d);

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

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

“the 2003 Act” means the Communications Act 2003(g);

“the 2016(h) Regulations” means the Environmental Permitting (England and Wales) Regulations 2016;

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

“authorised user(s)” means any person to whom Network Rail grants a permit to use the new access to access land which would otherwise have been accessed via the level crossings on such terms and conditions as Network Rail may reasonably require;

“authorised works” means the scheduled works 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;

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

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

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

“electronic transmission” means a communication transmitted—

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

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- (a) 1961 c.33.
(b) 1965 c.56.
(c) 1980 c.66.
(d) 1981 c.66.
(e) 1990 c.8.
(f) 1991 c.22.
(g) 2003 c.21.
(h) S.I.2016/1154

(b) by other means but while in electronic form,
and in this definition “electronic communications network” has the same meaning as in section 32(1)(a) (meaning of electronic communications networks and services) of the 2003 Act;
“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;
“level crossings” means the level crossings listed in column (2) of Schedule 5 (Closure of level crossings);
“licensees” means those members of the public using, accessing or egressing the station, including access, egress and drop off to the station via motor vehicles;
“limits of deviation” means the limits of land to be acquired or used shown on the deposited plans;
“limits of land to be acquired or used” means the limits of land to be acquired or used shown on the deposited plans;
“maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace, and “maintenance” is to be construed accordingly;
“Network Rail” means Network Rail Infrastructure Limited (company registration number 02904587) whose registered office is at 1 Eversholt Street, London, NW1 2DN;
“new access” means the new access and bridge as comprised in Work No.11
“Order land” means the land shown on the deposited plans which is within the limits of land to be acquired or used or the limits of deviation and described in the book of reference;
“Order limits” means the limits of deviation and the limits of land to be acquired or used and shown on the deposited plans;
“owner”, in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(b);
“the scheduled works” means the works specified in Schedule 1 (scheduled works) or any part of them;
“statutory undertaker” means—
(a) any person who is a statutory undertaker for any of the purposes of the 1990 Act; and
(b) any public communications provider within the meaning of section 151(1) of the 2003 Act;
“street” has the meaning given in section 48 (streets, street works and undertakers) of the 1991 Act and “street” includes part of a street;
“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;
“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 deposited plans.
(4) All distances, directions and lengths referred to in this Order are approximate and distances between points on a scheduled work are taken to be measured along that work.

(a) Section 32(1) was amended by S.I. 2011/1210

(b) 1981 c.67. The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1992 (c. 34). There are other amendments to section 7 which are not relevant to this Order.

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

(6) References in this Order to numbered works are references to the scheduled works as numbered in Schedule 1.

Incorporation of the Railway Clauses Act

3.—(1) The following provisions of the Railways Clauses Consolidation Act 1845^(a) are incorporated in this Order—

- (a) section 58^(b) (company to repair roads used by them), except for the words from “and if any question” to the end;
- (b) section 68 (accommodation works by company);
- (c) 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”;
- (d) sections 72 and 73 (supplementary provisions relating to accommodation works);
- (e) section 77 (presumption that minerals excepted from acquisition of land);
- (f) sections 78 to 85E^(c) 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);
- (g) section 103^(e) (refusal to quit carriage at destination);
- (h) section 105 (carriage of dangerous goods on railway), except for the words from “and if any person” to “for every such offence”; and
- (i) section 145^(f) (recovery of penalties).

(2) Section 12 (signals, watchmen etc.) of the Railways Clauses Act 1863^(g) is incorporated in this Order.

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

“the company” means Network Rail;

“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 and any other authorised works; and

“the special Act” means this Order.

(a) 1845 c.20.

(b) Section 58 was amended by section 46 of, and Part 3 of Schedule 7 to, the Justices of the Peace Act 1949 (c. 101).

(c) Section 84, as substituted, was amended by Part 3 of Schedule 7 to the Justices of the Peace Act 1949 (c. 101) and section 46 of the Criminal Justice Act 1982 (c. 48). Section 85C, as substituted, was amended by virtue of section 17(2)(a) of the Interpretation Act 1978 (c. 30).

(d) 1923 c.20.

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

(f) (17) Section 145 was amended by the Statute Law Revision Act 1892 and Part 2 of Schedule 12 to the Transport Act 1962 (c. 46).

(g) 1863 c. 92.

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 (street works in England and Wales) of the 1991 Act as major transport works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) (which defines what highway authority works are major highway works) of that Act; 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(a) (dual carriageways and roundabouts) of the 1980 Act.

(2) The following provisions of the 1991 Act do not apply in relation to any works executed under the powers conferred by this Order—

- (a) section 56 (power to give directions as to timing of street works);
- (b) section 56A (power to give directions as to placing of apparatus);
- (c) section 58 (restrictions on works following substantial road works);
- (d) section 73A (power to require undertaker to re-surface street);
- (e) section 73B (power to specify timing, etc., of re-surfacing);
- (f) section 73C (materials, workmanship and standard of re-surfacing);
- (g) section 78A (contributions to costs of re-surfacing by undertaker); and
- (h) Schedule 3A (restriction on works following substantial street works).

(3) The provisions of the 1991 Act mentioned in paragraph (4) (which, together with other provisions of that Act, apply in relation to the carrying out of 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 Network Rail under the powers conferred by article 11 (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.

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

- (a) section 54(c) (advance notice of certain works), subject to paragraph (5);
- (b) section 55(d) (notice of starting date of works), subject to paragraph (5);
- (c) section 57(e) (notice of emergency works);
- (d) section 59(f) (general duty of street authority to co-ordinate works);
- (e) section 60 (general duty of undertakers to co-operate);
- (f) section 68 (facilities to be afforded to street authority);
- (g) section 69 (works likely to affect other apparatus in the street);
- (h) section 76 (liability for cost of temporary traffic regulation); and
- (i) section 77 (liability for cost of use of alternative route);

(a) Section 64 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(2) of, and Schedule 9 to, the New Roads and Street Works Act 1991 (c. 22).

(b) 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).

(c) As amended by section 49(1) of the Traffic Management Act 2004.

(d) As also amended by sections 49(2) and 51(9) of the Traffic Management Act 2004.

(e) As also amended by section 52(3) of the Traffic Management Act 2004.

(f) As amended by section 42 of the Traffic Management Act 2004.

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

(5) Sections 54 and 55 of the 1991 Act as applied by paragraph (3) have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

(6) Nothing in article 12 (construction and maintenance of new or altered highways)—

- (a) prejudices the operation of section 87 (prospectively maintainable highways) of the 1991 Act; and Network Rail is not, by reason of any duty under that article to maintain a street, to be taken to be a street authority in relation to that street for the purposes of Part 3 of that Act; or
- (b) has effect in relation to street works with regard to which the provisions of Part 3 of the 1991 Act apply.

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) (requirement for environmental permit) of the 2016 Regulations in relation to the carrying out of a relevant flood risk activity;
- (b) section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991(a);
- (c) paragraph 5 (consent required for alteration, removal or replacement of a designated feature) of Schedule 1 to the Flood and Water Management Act 2010(b);
- (d) paragraph 7 (approval required for a drainage system for construction work) of Schedule 3 (sustainable drainage) to the Flood and Water Management Act 2010; and
- (e) the provisions of any byelaws made under, or having effect as if made under, section 66 (powers to make byelaws) of the Land Drainage Act 1991, which require consent or approval for the carrying out of the works.

(2) In this article, “flood risk activity” means an activity described in paragraph 3(1)(a), (b) or (c) of Schedule 25 (flood risk activities and excluded flood risk activities) to the Environmental Permitting (England and Wales) Regulations 2016.

PART 2

WORKS PROVISIONS

Principal Powers

Power to construct and maintain works

6.—(1) Network Rail may construct and maintain the scheduled works.

(2) Subject to article 7 (power to deviate) the scheduled works may only be constructed in the lines or situations shown on the deposited plans and in accordance with the levels shown on the deposited sections.

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

(a) 1991 c.59.

(b) 2010 c.29.

- (a) electrical equipment, signalling and permanent way works;
- (b) hoardings and fencing, ramps, means of access and footpaths, bridleways and cycle tracks;
- (c) embankments, cuttings, aprons, abutments, retaining walls, wing walls and culverts;
- (d) works to install or alter the position of apparatus, including mains, sewers, drains and cables;
- (e) works to alter or remove any structure erected upon any highway or adjoining land;
- (f) landscaping and other works to mitigate any adverse effects of the construction maintenance or operation of the scheduled works;
- (g) works for the benefit or protection of premises affected by the scheduled works;
- (h) works to alter the course of, or otherwise interfere with, a watercourse other than a navigable watercourse; and
- (i) works to erect and construct offices and other buildings, machinery, apparatus, works and conveniences,

(4) Subject to paragraph (5), Network Rail 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 authorised works.

(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 (ancillary acquisition of land) for the purposes specified in column (3) of that Schedule;
- (b) land specified in columns (1) and (2) of Schedule 3 (land in which only new rights etc. may be acquired) for the purposes specified in column (3) of that Schedule; or
- (c) land specified in columns (1) and (2) of Schedule 4 (land of which temporary possession may be taken) for the purposes specified in column (3) of that Schedule relating to the authorised works specified in column (4) of that Schedule.

Power to deviate

7. In constructing or maintaining any of the scheduled works, Network Rail may—

- (a) deviate laterally from the lines or situations shown on the deposited plans to the extent of the limits of deviation for that work; and
- (b) deviate vertically from the levels shown on the deposited sections-
 - (i) to any extent upwards for Work No. 3 in accordance with the deposited plan and for all other Works not exceeding 1.5 metres; or
 - (ii) any extent downwards as may be found to be necessary or convenient.

Level Crossings

Level crossings to be stopped up

8.—(1) Subject to the provisions of this article, the level crossings listed in column (2) of Schedule 5 (closure of level crossings) are stopped up and discontinued.

(2) Upon the stopping up and discontinuance of the level crossings referred to in paragraph (1) all rights of way (whether public or private) over those crossings are extinguished.

(3) In respect of the level crossings listed in Schedule 5 paragraphs (1) and (2) are not to have effect until the new access specified in column (3) in relation to that level crossing has or have been provided for authorised users and is or are open for use.

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

Streets

Power to alter layout etc., of streets

9.—(1) Network Rail may for the purposes of the authorised works alter the layout of, or carry out any works in, the streets specified in columns (1) and (2) of Schedule 6 (streets subject to alteration of layout) in the manner specified in relation to that street in column (3).

(2) Without limitation on the scope of the specific powers conferred by paragraph (1), but subject to paragraph (3), Network Rail may, for the purposes of constructing and maintaining any scheduled 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, Network Rail may—

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

(3) Network Rail must restore to the reasonable satisfaction of the street authority any street which has been temporarily altered under this article.

(4) The powers conferred by paragraph (2) must not be exercised without the consent of the street authority, but such consent must not be unreasonably withheld.

(5) If within 28 days of receiving an application for consent under paragraph (4) a street authority fails to notify Network Rail 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) Network Rail may, for the purposes of the authorised works, enter upon any of the streets specified in Schedule 7 (streets subject to street works) as are within the Order limits to the extent necessary and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (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 subparagraphs (a), (b) and (c).

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

Temporary stopping up of streets

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

- (a) divert the traffic from the street; and

(b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without limitation on the scope of paragraph (1), Network Rail may use any street stopped up under the powers conferred by this article within the Order limits as a temporary working site.

(3) Network Rail 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.

(4) Without limitation on the scope of paragraph (1), Network Rail may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule 8 (streets to be temporarily stopped up) to the extent specified in column (3) of that Schedule.

(5) Network Rail must not exercise the powers conferred by this article—

(a) in relation to any street specified as mentioned in paragraph (4) without first consulting the street authority; and

(b) in relation to any other street without the consent of the street authority which may attach reasonable conditions to any consent, but such consent must not be unreasonably withheld;

(6) 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.

(7) If within 28 days of receiving an application for consent under paragraph (5)(b) a highway authority fails to notify Network Rail of its decision or refuses consent without giving any grounds for its refusal that street authority is deemed to have granted consent.

Construction and maintenance of new or altered highways

12.—(1) Any highway (including a shared footpath/cycleway) to be constructed under this Order must be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed in writing between Network Rail and the highway authority in whose area the highway lies, must be maintained by and at the expense of Network Rail for a period of 12 months from its completion and from the expiry of that period by and at the expense of the highway authority.

(2) Where a highway is altered or diverted under this Order, the altered or diverted part of the highway must, when completed to the reasonable satisfaction of the highway authority in whose area the highway lies, unless otherwise agreed in writing with the highway authority, be maintained by and at the expense of Network Rail for a period of 12 months from its completion and from the expiry of that period by and at the expense of the highway authority.

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

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

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

(a) the character of the highway and the traffic which was reasonably to be expected to use it;

(b) the standard of maintenance appropriate for a highway of that character and used by such traffic;

(c) the state of repair in which a reasonable person would have expected to find the highway;

- (d) whether Network Rail knew, or could reasonably have been expected to know, that the condition of the part of the highway to which the action relates was likely to cause danger to users of the highway; and
- (e) where Network Rail could not reasonably have been expected to repair that part of the highway before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant to prove that Network Rail had arranged for a competent person to carry out or supervise the maintenance of the part of the highway to which the action relates unless it is also proved that Network Rail had given the competent person proper instructions with regard to the maintenance of the highway and that the competent person had carried out those instructions.

Access to works

13.—(1) Network Rail may, for the purposes of the authorised works—

- (a) form and lay out means of access, or improve existing means of access, in the locations specified in columns (1) and (2) of Schedule 9 (access to works); 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 Network Rail reasonably requires for the purposes of the authorised works.

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

Use of private roads for construction and operation

14.—(1) Network Rail may use any private road within the Order limits for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of, or in connection with the construction and operation of the authorised works.

(2) Network Rail must compensate the person liable for the repair of a road to which paragraph (1) applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred by paragraph (1)

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

Agreements with street authorities

15.—(1) A street authority and Network Rail may enter into agreements with respect to—

- (a) the construction of any new street (including any structure carrying the street over or under a railway) under the powers conferred by this Order;
- (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (c) the maintenance of the structure of any bridge constructed under the powers conferred by this Order;
- (d) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
- (e) the execution in the street of any of the works referred to in article 10(1) (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.

Supplemental Powers

Discharge of water

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

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

(3) Network Rail 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) Network Rail 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) Network Rail 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) Network Rail 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 of environmental permit) of the 2016 Regulations(b) .

(8) If a person who receives an application for consent or approval fails to notify Network Rail 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(c) have the same meaning as in that Act.

Protective works to buildings

17.—(1) Subject to the following provisions of this article, Network Rail may at its own expense carry out such protective works to any building lying within the Order limits as Network Rail considers to be necessary or expedient.

(a) 1991 c. 56. Section 106 was amended by sections 35(1) and (8) and 43(2) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43), sections 36(2) and 99

(b) S.I. 2016/1154.

(c) 1991 c. 57.

(2) Protective works may be carried out—

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

(3) For the purpose of determining how the functions under this article are to be exercised Network Rail may (subject to paragraph (5)) enter and survey any building falling within paragraph (1) and any land within its curtilage.

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

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

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

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

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building to be referred to arbitration under article 44 (arbitration).

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

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised works constructed in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the construction or operation of that part of the authorised works,

Network Rail must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Without affecting article 43 (no double recovery) nothing in this article relieves Network Rail from any liability to pay compensation under section 10(2)(a) (further provision as to compensation for injurious affection) of the 1965 Act.

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

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

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

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

Power to survey and investigate land

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

- (a) survey or investigate any land shown within the Order limits;
- (b) without limitation on the scope of sub-paragraph (a), make trial holes and/or boreholes in such positions on the land as Network Rail 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/or boreholes; and
- (e) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (d).

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

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

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

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

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

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

- (a) Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment^(a); or
- (b) Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora^(b).

(a) O.J. No. L 26, 28.1.2012, p. 1.

(b) O.J. No. L 206, 22.7.1992, p. 7.

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

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

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

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

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

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

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

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

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

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

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

but such consent must not be unreasonably withheld.

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

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

that authority is deemed to have granted consent.

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

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of Acquisition

Power to acquire land

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

- (a) so much of the land shown on the deposited 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 (ancillary acquisition of land) (being land shown on the deposited plans and described in the book of reference) as may be required for the purpose specified in relation to that land in column (3) of that Schedule,

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

(2) This article is subject to articles 22 (power to acquire new rights) and 25 (temporary use of land for construction of works), and does not apply to any land specified in Schedule 4 (land of which temporary possession may be taken).

Application of Part 1 of the 1965 Act

20.—(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 applied by paragraph (1), has effect subject to 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 30 (time limit for exercise of powers of acquisition) of the Network Rail (Cambridge South Infrastructure Enhancements) Order 202[X](c)”.

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

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

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

(7) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 30 (time limit for exercise of powers of acquisition) of the Network Rail (Cambridge South Infrastructure Enhancements) Order 202[X]”.

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

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

(a) 1981 c.67.

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

(c) S.I. [X].

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

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

(f) Schedule 2A was inserted by paragraph 3 of Schedule 3 to the Housing and Planning Act 2016.

“(2) But see article 23 (power to acquire subsoil or airspace only) of the Network Rail (Cambridge South Infrastructure Enhancements) Order 202[X], which excludes the acquisition of subsoil or airspace only from this Schedule.”; and

(b) after paragraph 29 insert—

“PART 4 INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under articles 25 (temporary use of land for construction of works) and 29 (temporary use of land for maintenance works) of the Network Rail (Cambridge South Infrastructure Enhancements) Order 202[X].”

Application of the 1981 Act and the 1961 Act

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

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

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

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

(5) In section 5B(b) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 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 30 (time limit for exercise of powers of acquisition) of the Network Rail (Cambridge South Infrastructure Enhancements) Order 202[X]”.

(6) In section 6(c) (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(d) (constructive notice to treat), in subsection (1)(a), omit the words “ (as modified by section 4 of the Acquisition of Land Act 1981)”.

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

“(2) But see article 23 (power to acquire subsoil or airspace only) of the Network Rail (Cambridge South Infrastructure Enhancements) Order 202[X], which excludes the acquisition of subsoil or airspace only from this Schedule.”

(9) References to the 1965 Act are construed as references to that Act as applied to the acquisition of land under article 19 (power to acquire land) by article 20 (application of Part 1 of the 1965 Act).

(10) Part 1 of the 1961 Act shall apply where pursuant to this Order there arises a dispute as to compensation payable pursuant to articles 8 (level crossings to be stopped up), 11 (temporary stopping up of streets), article 14 (use of private roads for construction and operation), 18 (power

(a) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016.

(b) Section 5B was inserted by section 202(2) of the Housing and Planning Act 2016.

(c) Section 6 was 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.

(d) Section 7 was amended by paragraph 3 of Schedule 18 to the Housing and Planning Act 2016.

(e) Schedule 1A was inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016.

to survey and investigate land), 24 (rights under or over streets), 25 (temporary use of land for construction of works), 26 (temporary use of land for maintenance works), 27 (temporary use of land for access), 29 (extinction or suspension of private rights of way), 33 (power to lop trees overhanging the authorised works), notwithstanding that such dispute may not relate to compensation for the acquisition of land authorised by this Order

Power to acquire new rights

22.—(1) Subject to paragraph (2), Network Rail may acquire compulsorily such easements or other rights over any land which it is authorised to acquire under article 19 (power to acquire land) as may be required for any purpose for which that land may be acquired under that provision, by creating them as well as by acquiring easements or other rights already in existence.

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

(3) In the case of plot shown as plot 8a on the deposited plans the power to acquire new rights under paragraph (2) extends to acquiring rights on behalf of owners of land affected by the exercise of the powers of the Order for the purpose specified in column (2) of Schedule 3 and for the purposes of granting a permissive right to the public to access the replacement land to be provided pursuant to article 36.

(4) Subject to Schedule 2A (counter-notice requiring purchase of land) to the 1965 Act (as substituted by paragraph 5(8) of Schedule 10 (modification of compensation and compulsory purchase enactments for creation of new rights)), where Network Rail acquires a right over land under paragraphs (1) or (2) Network Rail is not required to acquire a greater interest in that land.

(5) Schedule 10 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this Order of a right over land by the creation of a new right.

(6) In any case where the acquisition of new rights under paragraph (1) or (2) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker Network Rail may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question.

(7) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (6) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by Network Rail.

Power to acquire subsoil or airspace only

23.—(1) Network Rail may acquire compulsorily so much of, or such rights in, the subsoil of or the airspace over the land referred to in paragraph (1)(a) or (b) of article 19 (power to acquire land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where Network Rail acquires any part of, or rights in, the subsoil of or the airspace over land under paragraph (1), Network Rail is not required to acquire an interest in any other part of the land.

(3) Paragraph (2) does not prevent Schedule 2A to the 1965 Act (as modified by article 20 (application of Part 1 of the 1965 Act)) or Schedule A1 to the 1981 Act (as modified by article 21 (application of the 1981 Act)) from applying where Network Rail acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Rights under or over streets

24.—(1) Network Rail may enter upon and appropriate so much of the subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised works and may use the subsoil or airspace for those purposes or any other purpose ancillary to its railway undertaking.

(2) Subject to paragraph (4), Network Rail may exercise any power conferred by paragraph (1) in relation to a street without Network Rail being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

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

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

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing of cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary possession of land

Temporary use of land for construction of works

25.—(1) Network Rail 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 4 (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 (10), 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(b) (execution of declaration) of the 1981 Act;
- (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) construction of any permanent works 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 Network Rail must serve notice of the intended entry on the owners and occupiers of the land.

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

(b) Section 4 was amended by sections 184 and 185 of, and paragraphs 1 and 2 of Schedule 18 to, the Housing and Planning Act 2016.

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

- (a) in the case of land specified in paragraph (1)(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 4; 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 Network Rail 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 1981 Act.

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

- (a) replace a building removed under this article;
- (b) restore the land on which any works have been constructed under paragraph (1)(d); or
- (c) remove any ground strengthening works which have been placed in that land to facilitate construction of the authorised works.

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

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

(7) Without affecting article 43 (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) Where Network Rail takes possession of land under this article, Network Rail is not required to acquire the land or any interest in it.

(9) 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 20 (application of Part 1 of the 1965 Act).

(10) Paragraph (1)(a)(ii) does not authorise Network Rail to take temporary possession of any land which it is not authorised to acquire under article 19 (power to acquire land) or any land specified in Schedule 3 (land in which only new rights etc., may be acquired).

Temporary use of land for maintenance works

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

- (a) enter upon and take temporary possession of any Order land if such possession is reasonably required for the purpose of maintaining the work or any ancillary works connected with it; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

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

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

- (2) Paragraph (1) does not authorise Network Rail to take temporary possession of—
- (a) any house or garden belonging to a house;
 - (b) any building (other than a house) if it is for the time being occupied; or
 - (c) any land listed in Schedule 3 (land in which only new rights etc., may be acquired) or Schedule 4 (land of which temporary possession may be taken).
- (3) Not less than 28 days before entering upon and taking temporary possession of land under this article Network Rail must serve notice of the intended entry on the owners and occupiers of the land.
- (4) Network Rail may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of works for which possession of the land was taken.
- (5) Before giving up possession of land of which temporary possession has been taken under this article, Network Rail must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.
- (6) Network Rail must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.
- (7) Any dispute as to 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 43 (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 the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).
- (9) Where Network Rail takes possession of land under this article, it is not required to acquire the land or any interest in it.
- (10) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of article 20 (application of Part 1 of the 1965 Act).
- (11) In this article “the maintenance period” in relation to a scheduled work means the period of 5 years beginning with the date on which the work is opened for use.

Temporary use of land for access

- 27.—(1) Network Rail may use any land specified in Schedule 4 (land of which temporary possession may be taken) for the passage of persons or vehicles (with or without materials, plant and machinery) for the purpose of or in connection with the construction of the authorised works.
- (2) The power under paragraph (1) is exercisable on giving at least 7 days' notice (or, where access is urgently required, such notice as is reasonably practicable) to the owners and occupiers of the land.
- (3) But paragraph (2) does not require notice to be given in relation to land where notice under that paragraph has already been given in relation to that land.
- (4) Network Rail must pay compensation to the owners and occupiers of the land to which paragraph (1) applies for any loss or damage arising from the exercise of the power conferred by that paragraph.
- (5) Any dispute as to a person's entitlement to compensation under paragraph (4), or as to the amount of such compensation, shall be determined under Part 1 of the 1961 Act.

(6) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of article 20 (application of Part 1 of the 1965 Act).

Compensation

Disregard of certain interest and improvements

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

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

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

(2) In paragraph (1) "relevant land" means the land acquired from the person concerned or any other land with which that person is, or was at the time when the building was erected, the works executed or the improvement or alteration made, directly or indirectly concerned.

Supplementary

Extinction or suspension of private rights of way

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

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

whichever is the sooner.

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

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

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

whichever is the sooner.

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

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

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

(6) This article does not apply in relation to any right of way to which section 271 or 272(a) (extinguishment of rights of statutory undertakers etc.) of the 1990 Act or paragraph 2 of Schedule 11 (provisions relating to statutory undertakers etc.) applies.

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

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

(8) If any such agreement as is mentioned in sub-paragraph (7)(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

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

- (a) no notice to treat is to be served under Part 1 of the 1965 Act as applied to the acquisition of land by article 20 (application of Part 1 of the 1965 Act); and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 21 (application of the 1981 Act).

(2) The powers conferred by article 25 (temporary use of land for construction of works) cease at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents Network Rail remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

PART 4

MISCELLANEOUS AND GENERAL

Powers to transfer undertaking

31.—(1) Network Rail may—

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

(a) Section 272 was amended by paragraphs 103(1) and (2) of Schedule 17 to the Communications Act 2003 (c. 21).

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to Network Rail, except in paragraph (1), include references to the transferee or lessee.

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

(4) The consent of the Secretary of State is required for the exercise of the powers of paragraph (1).

Defence to proceedings in respect of statutory nuisance

32.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990^(a) in relation to a nuisance falling within paragraph (g) of section 79(1)^(b) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) 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 Network Rail 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 which are being carried out in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61(c) (prior consent for work on construction sites) or section 65(d) (noise exceeding registered level), of the Control of Pollution Act 1974^(e); or
- (b) that the nuisance is a consequence of the construction, operation or maintenance of the authorised works 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 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), do not apply where the consent relates to the use of premises by Network Rail for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works.

(3) In proceedings for an offence under section 80(4) of the Environmental Protection Act 1990 (offence of contravening abatement notice) in respect of a statutory nuisance falling within section 79(1)(g) or (ga)(f) of that Act where the offence consists of contravening requirements imposed by virtue of section 80(1)(a) or (b)(g) of that Act, it is a defence to show that the nuisance—

- (a) is a consequence of the construction, operation or maintenance of the works authorised by this Order; and
- (b) cannot reasonably be avoided.

(a) 1990 c. 43. Section 82 was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c. 40) and paragraph 6 of Schedule 17 to the Environment Act 1995 (c. 25).

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

(c) Section 61 was amended by Schedule 7 to the Building Act 1984 (c. 55), paragraph 15(3) of Schedule 15 to the Environmental Protection Act 1990 (c. 43), Schedule 24 to the Environment Act 1995 and paragraph 10 of Schedule 6 to the Building (Scotland) Act 2003 (asp. 8).

(d) Section 65 was amended by paragraph 15(4) of Schedule 15 to the Environmental Protection Act 1990 and Schedule 24 to the Environment Act 1995.

(e) 1974 c. 40.

(f) Section 79(1)(ga) was inserted by section 2(1) and (2)(b) of the Noise and Statutory Nuisance Act 1993.

(g) Section 80(1) was amended by section 86 of the Clean Neighbourhoods and Environment Act 2005.

(4) The provisions of this article do not affect the application to the authorised works of section 122 (statutory authority as a defence to actions in nuisance, etc.) of the Railways Act 1993^(a) or any rule of common law having similar effect.

Power to lop trees overhanging the authorised works

33.—(1) Network Rail 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), Network Rail 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

34.—(1) Network Rail 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 and any connected ancillary purposes.

(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.

Planning Permission and supplementary powers

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

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

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

(a) 1993 c. 43. Section 122 was amended by the Transport Act 2000 (c. 38) and the Railways Act 2005 (c. 14).

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

(c) S.I. 1969/17

(d) S.I. 1975/148

(e) S.I. 1999/1892

(4) In relation to the application of article 3(1) of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Tree Preservation)(England) Regulations 2012 1975(a), as incorporated in any tree preservation order or as having effect by virtue of regulation 7 of those Regulations or Section 193 of the Planning Act 2008(b) any direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to the authorised works shall be treated as deeming permission to have been granted on application under regulation 17(1)(a) of those Regulations.

(5) The AstraZeneca conditions, ~~and~~ University conditions, Countryside condition and CBC/CML conditions have no effect within the Order limits.

(6) To the extent that the carrying out of any development in accordance with a direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to the authorised works prevents any development permitted by the AstraZeneca permission (whether or not within the Order limits) from being carried out in accordance with any of the AstraZeneca conditions, then to that extent—

- (a) there is deemed to be no breach of the AstraZeneca conditions concerned, and
- (b) no enforcement action may be taken in respect of the development carried out under the AstraZeneca permission.

(7) To the extent that the carrying out of any development in accordance with a direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to the authorised works prevents any development permitted by the University permission (whether or not within the Order limits) from being carried out in accordance with any of the University conditions, then to that extent—

- (a) there is deemed to be no breach of University conditions concerned, and
- (b) no enforcement action may be taken in respect of the development carried out under the University permission.

(8) To the extent that the carrying out of any development in accordance with a direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to the authorised works prevents any development permitted by the Countryside permission (within the Order limits) from being carried out in accordance with the Countryside condition, then to that extent

- (a) there is deemed to be no breach of Countryside condition concerned, and
- (b) no enforcement action may be taken in respect of the development carried out under the Countryside permission.

(9) To the extent that the carrying out of any development in accordance with a direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to the authorised works prevents any development permitted by the CBC/CML permission 1 and/or CBC/CML permission 2 (within the Order limits) from being carried out in accordance with the CBC/CML conditions, then to that extent

- (a) there is deemed to be no breach of CBC/CML conditions concerned, and
- (b) no enforcement action may be taken in respect of the development carried out under the CBC/CML permission1 and/or CBC/CML permission2.

~~(8)~~(10) In this article—

“the AstraZeneca conditions” mean conditions 42 and 45 of the AstraZeneca permission;

“the AstraZeneca permission” means the outline planning permission granted by Cambridge City Council on ~~15 October 2009 and given reference number 06/0796/OUT as amended by~~

(a) S.I. 2012/605
(b) 2008. c.29

~~the outline planning permission granted by Cambridge City Council on 5 March 2015 and given reference number 14/2094/S73; (amending the outline planning permission granted by Cambridge City Council on 15 October 2009 and given reference number 06/0796/OUT)~~ with reserved matters approved by Cambridge City Council under the reference numbers 14/1633/REM, 19/1070/REM and 20/05027/REM and any ~~subsequent further~~ permission under section 73 of the 1990 Act or any non-material amendment to any of those permissions and approvals;

"the CBC/CML conditions" means conditions 15 to 21 and 24 to 44 of the CBC/CML permission 1 and conditions 32, 38 and 49 of CBC/CML permission 2;

"The CBC/CML permission 1" means the outline planning permission granted by Cambridge City Council on 2 April 2015 and given reference number 14/1691/S73;

"The CBC/CML permission 2" means the outline planning permission granted by Cambridge City Council on 5 September 2017 and given reference number 16/0176/OUT;

"the Countryside permission" means the outline planning permission granted by Cambridge City Council on 6 August 2010 and given reference 07/620 OUT with reserved matters 15/1829/REM and any further S73 permission under section 73 of the 1990 Act or any non-material amendment to those permissions and approvals;

"the Countryside condition" means condition 11 of the Countryside permission;

"the University conditions" means mean conditions 42 to 47 of the University permission; and
"the University permission" means the outline planning permission granted by Cambridge City Council ~~on 15 October 2009 and given reference number 06/0796/OUT as amended by the outline planning permission granted by Cambridge City Council on 5 March 2015 and given reference number 14/2094/S73 (amending the outline planning permission granted by Cambridge City Council on 15 October 2009 and given reference 06/0796/OUT)~~, together with reserved matters approved by Cambridge City Council under reference number 16/0653/REM and any ~~subsequent further~~ permission under section 73 of the 1990 Act or any non-material amendments approved in relation to any of the aforementioned permissions and approvals.

Public open space

36.—(1) Network Rail shall not under the powers of this Order vest any part of the existing open space until Network Rail has vested of so much of the replacement land as is equivalent in area to the amount of the existing open space that is required by Network Rail for the authorised works.

(2) Upon Network Rail vesting so much of the existing open space as is required for the authorised works that land shall be discharged from all rights, trusts and incidents to which it was previously subject.

(3) Network Rail shall lay out as replacement land (being so much of the replacement land which has been vested under paragraph (1)) before the existing open space has been permanently vested under paragraph (1).

(4) As soon as Cambridge City Council has certified that the land referred to in paragraph (3) has been laid out to its reasonable satisfaction that land shall vest (or be offered for vesting) in the relevant trustees of the Pemberton Trust (as identified in the Book of Reference) and Cambridge City Council subject to the like rights, trusts and incidents attached to so much of the existing open space of which possession has been taken under paragraph (1).

(5) In this article—

- (a) "the existing open space" means the land described as open space land and delineated orange on the deposited plan titled "Open Space and Exchange Land"
- (b) "the replacement land" means the land described as Exchange Land and delineated green on the deposited plan titled "Open Space and Exchange Land"

Obstruction of construction of authorised works

37. Any person who, without reasonable excuse—

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

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

Disclosure of confidential information

38.—(1) A person who—

- (a) enters a factory, workshop or workplace under the provisions of article 17 (protective works to buildings) or article 18 (power to survey and investigate land); and
- (b) discloses to any person any information obtained as a result of that entry and relating to any manufacturing process or trade secret,

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

Statutory undertakers etc.

39. The provisions of Schedule 11 (provisions relating to statutory undertakers etc.) have effect.

Certification of plans etc.

40. Network Rail must, as soon as practicable after the making of this Order, submit copies of the book of reference, the deposited sections and the deposited plans to the Secretary of State for certification that they are, respectively, true copies of the book of reference, the deposited sections and the deposited 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.

Service of notices

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

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

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

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

(a) 1978 c.30

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

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

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

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

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

(7) Any consent to the use of electronic 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

42. Schedule 12 (protective provisions) has effect.

No double recovery

43. 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

44. 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 for Transport

Address

Date []

Head of the Transport and Works Act Orders Unit

Department for Transport

SCHEDULE 1

Article 2

SCHEDULED WORKS

In the County of Cambridgeshire, City of Cambridgeshire and District of South Cambridgeshire

In the County of Cambridgeshire, City of Cambridge—

Work No. 1 – A railway (Down Cambridge Loop Line) (580 metres in length) on the western side of the course of the existing railway (Bethnal Green to King's Lynne line) commencing 20 metres north of Long Road (A1134) overbridge and terminating at Work No.3.

Work No. 2 – A railway (Up Cambridge Loop Line) (586 metres in length) on the eastern side of the course of the existing railway (Bethnal Green to King's Lynne line) commencing 20 metres north of Long Road (A1134) overbridge and terminating at Work No.3.

Work No. 3 – A new station (Cambridge South) located directly south of the (Guided Busway) overbridge consisting four new platforms and associated railway lines, a station footbridge with stairs and lifts, high level concourse, eastern and western entrance buildings with ticketing and staffing facilities and associated forecourt areas and a secondary means of escape footbridge.

Work No. 4 – A new path (pedestrian and cycling) (378 metres in length) commencing at the Guided Busway route on the west side of Hobson's Park and terminating at Work No. 3.

Work No. 5 – A new pedestrian path (96 metres in length) including an at grade crossing over the Guided Busway commencing at Work No.4 in Hobson's Park and terminating 96 metres on the north of its commencement on the north of the Guided Busway route within the Active Recreation Area.

Work No. 6 – A railway (Down Cambridge Loop Line) (448 metres in length) on the western side of the course of the existing railway (Bethnal Green to King's Lynne line) commencing at Work No.3 and terminating 110 metres south of Addenbrookes Road (Nine Wells) overbridge, railway systems compound, drainage works and features.

Work No. 7 – A railway (Up Cambridge Loop Line) (447 metres in length) on the eastern side of the course of the existing railway (Bethnal Green to King's Lynne line) commencing at Work No.3 and terminating 108 metres south of Addenbrookes Road (Nine Wells) overbridge.

In the County of Cambridgeshire, District of South Cambridgeshire [Parish of Great Shelford]—

Work No. 8 – Realignment of the railway (Down Shepreth Branch Line) (1036 metres in length) on the western side of the existing railway commencing 775 metres south of Addenbrookes Road (Nine Wells) overbridge and terminating 25 metres east of Cambridge Road overbridge, works include the relocation of the existing telecommunications mast and associated equipment and the installation of a new equipment building.

Work No. 9 – A crossover (138 metres in length) between the Up and Down railway lines of the existing railway (Bethnal Green to King's Lynne line) commencing 35 metres south of Dukes No.2 Level Crossing and terminating 138 metres south of its commencement.

Work No. 10 – Realignment of the railway (Up Shepreth Branch Line) (502 metres in length) on the eastern side of the existing railway commencing 200 metres north of Webster Level Crossing and terminating 25 metres east of Cambridge Road overbridge.

In the County of Cambridgeshire, City of Cambridge and District of South Cambridgeshire [Parish of Great Shelford]—

Work No. 11 – Agricultural accommodation bridge over the Hobson's Brook 420m west of the railway, commencing at a point 25 metres south of Addenbrookes Road and terminating at a point 82 metres south of its commencement

SCHEDULE 2

ANCILLARY ACQUISITION OF LAND

Articles 6 and 19

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on the deposited plan</i>	<i>(3)</i> <i>Purposes for which land may be acquired</i>
In the County of Cambridgeshire, City of Cambridge	1a	maintenance access for railway infrastructure
	31	sub soil to install soil nails and anchors together with associated ground stabilization works
The District of South Cambridgeshire	92	Replacement land for existing open space

SCHEDULE 3

LAND IN WHICH ONLY NEW RIGHTS ETC., MAY BE ACQUIRED

Articles 6 and 22

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on the deposited plan</i>	<i>(3)</i> <i>Purposes for which rights may be acquired</i>
In the County of Cambridgeshire, City of Cambridge	2, 8	Access for maintenance of authorised works and placing of equipment/use as worksite in those places marked "c" on the deposited plans.
	8a	Right to access the Replacement land for existing open space and to grant permissive right of access to the public and right of access including for authorised users
	18, 19 and 24	Access for maintenance of authorised works

	20, 21, 22, 23, 29, 30, 37, 38, 44	To pass and repass over Francis Crick Avenue and Robinson Way for purposes to access the station for Network Rail and its licensees, and access for construction of authorised works including construction of new station access and maintenance of authorised works.
	42, 43, 45a	Emergency egress and safe passage from the station for Network Rail and its licensees
	41a, 45c, 59, 60 and 64	Access for maintenance of the authorised works.
	84	Permanent drainage right/easement
In the County of Cambridgeshire, District of South Cambridgeshire	95	Access for maintenance of authorised works and placing of equipment/use as worksite in those places marked "c" on the deposited plan.
	100, 103 1 and 106	Access for maintenance of the authorised works.

SCHEDULE 4

Articles 6, 25 and 27

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 plan</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>
In the County of Cambridgeshire, City of Cambridge	1, 12, 13, 15a, 16, 17, 25, 26 and 28	Access for construction and works site	Work Nos. 1 and 2
	2	Access for construction, works site, and construction compound.	Work Nos. 1 and 2

4, 5, 4d, 4e, 4f, <u>4g</u> and 6a	Access for construction and works site, accommodation works, landscaping, drainage works.	Work Nos. 4 and 5
6, 8 and 10	Access for construction, works site, accommodation works, landscaping works, drainage works, environmental mitigation, works compound, temporary storage of materials.	Work Nos. 1, 3, 4, 6, 7 and 11
6e , 11, 84, 84b, 85, 87, 88, 90, 91, 93 and 94	Access for construction, works site and accommodation works, landscaping and drainage works.	Work Nos. 6, 7 and 11.
41	Access for construction works site, accommodation works and temporary mobile crane.	Work No. 3
<u>41</u> , 41a, 45, 45a, 45b, 45c, 46, 49, 51, 53, 55, 56 and 57	Access for construction, works site, accommodation works, landscaping works and drainage works.	Work Nos. 3, 6 and 7
54a, 61, 62, 63, <u>64</u> , 65, 66, 67, 68, 69, 76, 77, 78, 79, 80, <u>81</u> , 82 and 83	Access for construction, works site, accommodation works, works compound, landscaping works, environmental mitigation, drainage works and works for temporary diversion of National Cycle Network Route 11 and Genome path.	Work Nos. 3, 6 and 7
95	Access for construction (including protective measures/works for scheduled ancient monument) works site and compound.	Work Nos. 8, 9 and 10
99	Access for construction, works site, accommodation works and drainage works.	Work Nos. 8, 9 and 10

97, 100, 101, ~~102~~, ~~103~~,
~~104~~, 105 and 107

Access for construction,,
works site and
accommodation works

Work Nos. 8 and
10

SCHEDULE 5

CLOSURE OF LEVEL CROSSINGS

Article 8

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Level crossings to be discontinued</i>	<i>(3)</i> <i>Alternative</i>
In the County of Cambridgeshire, District of South Cambridgeshire	Dukes No.2 level crossing at the point marked with a blue line on sheet 4 of the deposited plans	Work No. 11
In the County of Cambridgeshire, District of South Cambridgeshire	Websters level crossing at point marked with a blue line on sheet 5 on the deposited plans	Work No. 11

SCHEDULE 6

STREETS SUBJECT TO ALTERATION OF LAYOUT

Article 9

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to alteration of layout</i>	<i>(3)</i> <i>Description of alteration</i>
In the County of Cambridgeshire, City of Cambridge	Francis Crick Avenue	Traffic signal modifications for station access and widen existing pedestrian/cycle crossing

SCHEDULE 7

STREETS SUBJECT TO STREET WORKS

Article 10

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Streets subject to street works</i>
In the County of Cambridgeshire, City of Cambridge	Access road off Long Road within plot 1 Addenbrooke's Road Francis Crick Avenue

SCHEDULE 8

Article 11

STREETS TO BE TEMPORARILY STOPPED UP OR DIVERTED

<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 or diversion</i>
In the County of Cambridgeshire, District of South Cambridgeshire	Footpath 198/1	Between points P1 and P2 (on sheet 5 of the deposited plans)
Parish of Great Shelford	National Cycle Network Route 11	Between points W1 and W2 (on sheet 5 of the deposited plans)
In the County of Cambridgeshire, City of Cambridgeshire	Route known as the Genome Path	Temporarily stopped up between points Y1 and Y2 and temporary diversion over the route delineated between points Z1, Z2 and Z3 (on sheet 3 of the deposited plans.)
	National Cycle Route 11	Temporarily stopped up between points X1 and X2 and temporarily diverted between points Z1, Z2 and Z3 (on sheet 3 of the deposited plans)
	Long Road access track	Between points L1 and L2 on Sheet 1 of the deposited plans
	Addenbrookes Road footpath leading to Hobsons Park	Between points K1 and K2 on sheet 3 of the deposited plans

SCHEDULE 9

Article 13

ACCESS TO WORKS

<i>(1)</i>	<i>(2)</i>
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<i>Area</i>	<i>Description of Access</i>
In the County of Cambridgeshire, City of Cambridge	Improvement and widening of the access off Long Road marked A1 on sheet 1 of the deposited plans
	Creation of new temporary vehicular <u>access</u> off Francis Crick Avenue marked A2 on sheet 2 the deposited plans
	Creation of new vehicular access to Cambridge South station off Francis Crick Avenue marked A3 on sheet 2 the deposited plans
	Widening and improvement of access off Addenbrookes Road roundabout with the National Cycle Network marked A4 on sheet 3 of the deposited plans
	Widening and improvement of access off Addenbrookes Road roundabout leading to the pumping station at a point marked A5 on sheet 3 of the deposited plans
In the County of Cambridgeshire, District of South Cambridgeshire	Widening and improvement of access and visibility splay works at Granhams Road marked A6 on sheet 5 of the deposited plans
	Widening and improvement of access at Addenbrookes Road marked A7 on sheet 6 of the deposited plans

SCHEDULE 10

Articles 20 and 21

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

Compensation enactments

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

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

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

“(5A) If—

- (a) the acquiring authority enters on land for the purposes of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 10 to the Network Rail (Cambridge South Infrastructure Enhancements) Order 202[X] (“the 202[X] Order”);
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 10 to the 202[X] Order) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,

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

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

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5(3)—

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

Application of Part 1 of the 1965 Act

4. Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by article 20 (application of Part 1 of the 1965 Act) to the acquisition of land under article 19 (power to acquire land), applies to the compulsory acquisition of rights under article 22(1) or (2) (power to acquire new rights)—

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

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

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

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

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

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

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

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

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

(5) Section 11(a) (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right, as well as the notice of entry

(a) 1973 c.26.

required by subsection (1) of that section (as it applies to a compulsory acquisition under article 20(1)), it has power, exercisable in the equivalent circumstances and subject to the equivalent conditions, to enter for the purpose of exercising that right; and sections 11A(b) (powers of entry: further notices of entry), 11B(c) (counter-notice requiring possession to be taken on specified date), 12(d) (unauthorised entry) and 13(e) (refusal to give possession to acquiring authority) of the 1965 Act are modified correspondingly.

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

(7) Section 22 (interests omitted from purchase) of the 1965 Act (as modified by article 20(7)) is modified so as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

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

“SCHEDULE 2A COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

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

(2) But see article 23 (power to acquire subsoil or airspace only) of the Network Rail (Cambridge South Infrastructure Enhancements) Order 202[X], which excludes the acquisition of subsoil or airspace only from this Schedule.

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

Counter-notice requiring purchase of land

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

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

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- (a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.
- (b) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.
- (c) Section 11B was inserted by section 187(2) of the Housing and Planning Act 2016.
- (d) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23) and paragraph 4 of Schedule 16 to the Housing and Planning Act 2016.
- (e) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to, the Tribunals Courts and Enforcement Act 2007 (c. 15).
- (f) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

Response to counter-notice

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

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

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

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

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

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

Determination by Upper Tribunal

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

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

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

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

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

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

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

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

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

PROVISIONS RELATING TO STATUTORY UNDERTAKERS ETC.
ON LAND ACQUIRED

Apparatus of statutory undertakers etc. on land acquired

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

(2) In the provisions of the 1990 Act, as applied by sub-paragraph (1), 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 Network Rail 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 sub-paragraph, any person who is—

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

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

(5) The provisions of the 1990 Act mentioned in sub-paragraph (1), as applied by that sub-paragraph, 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) of the 2003 Act; and

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

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

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

(c) The definition of “public utility undertakers” was amended by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act.

PROTECTIVE PROVISIONS

PART 1

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

Application

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

2. The provisions of paragraph 1 of Schedule 11 (provisions relating to statutory undertakers, etc.), in so far as they relate to the removal of apparatus, do not apply in relation to apparatus to which this Part of this Schedule applies.

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

Interpretation

4. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

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

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

(a) 1989 c.29

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

“undertaker” means—

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

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

Acquisition of apparatus

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

Alternative apparatus

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

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

(3) Any alternative apparatus to be constructed in land of Network Rail under this Part of this Schedule is to be constructed in such manner and in such line or situation as may be agreed between the undertaker in question and Network Rail within 21 days of the service of a notice under sub-paragraph (2), or in default of such agreement settled by arbitration in accordance with article 44 (arbitration).

(4) In any case where alternative apparatus is to be provided or constructed under sub-paragraph (2), or if in consequence of the exercise of any of the powers conferred by this Order an undertaker reasonably needs to remove any of its apparatus, Network Rail must, subject to sub-paragraph (5), afford to the undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of Network Rail and subsequently for the maintenance of that apparatus.

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

(6) The undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 44, and after the grant to the undertaker of any such facilities and rights as are referred to in sub-paragraph (4) or (5), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and

(a) 1986 c. 44.

subsequently to remove any apparatus required by Network Rail to be removed under the provisions of this Part of this Schedule.

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

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

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, Network Rail affords to an undertaker facilities and rights for the construction and maintenance in land of Network Rail of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between Network Rail and the undertaker in question or in default of agreement settled by arbitration in accordance with article 44 (arbitration).

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

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

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

Existing apparatus: protection and access

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

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

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

(4) If an undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by Network Rail, reasonably requires the removal of any apparatus and gives written

notice to Network Rail of that requirement, paragraphs 1 to 7 apply as if the removal of the apparatus had been required by Network Rail under paragraph 6(2).

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

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

Expenses

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

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

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

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions except where this has been solely due to using the nearest currently available type; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by Network Rail or, in default of agreement, is not determined by arbitration in accordance with article 44 (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 paragraph would be payable to the undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

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

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

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

(6) Any dispute as to whether a financial benefit is conferred in accordance with sub-paragraph (5) or as to the amount of such financial benefit which cannot be agreed is to be determined in accordance with article 44 (arbitration).

Damage to apparatus: costs, losses, etc.

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

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

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

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

Enactments and agreements

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

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

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

(2) In this Part of this Schedule—

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

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

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

“electronic communications code network” means—

- (a) so much of an electronic communications network or infrastructure 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.

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

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

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

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

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

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

(a) See section 106.

(4) Any difference arising between Network Rail and the operator under this paragraph is to be referred to and settled by arbitration under article 44 (arbitration).

3. This Part of this Schedule does not apply to—

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

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

PART 3
FOR THE PROTECTION OF DRAINAGE
AUTHORITIES AND THE ENVIRONMENT AGENCY

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

(2) In this Part of this Schedule—

“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 or 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; or
- (c) any work or operation that is in, on, under, over or within 16 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.

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

- (d) erecting any mill dam, weir or other like obstruction to the flow of any ordinary watercourse, or raising or otherwise altering any such obstruction;
- (e) erecting a culvert in any ordinary watercourse;
- (f) altering a culvert in a manner that would be likely to affect the flow of any ordinary watercourse; or
- (g) 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, removal and carrying out excavations in relation to a work, and “construct” and “constructed” are construed accordingly;

“the drainage authority” means—

- (h) in relation to a category 1 specified work, the Agency;
- (i) 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;

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

(a) 2010 c.29

(b) 1991 c.59

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

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

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

2.—(1) Before beginning to construct any specified work, Network Rail must submit to the drainage authority plans of the 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 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 article 44 (arbitration).

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

(a) must not be unreasonably withheld;

(b) is deemed to have been given if it is neither given nor refused within 2 months of the receipt of the plans for approval or where further particulars are submitted under 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, water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties.

(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).

3. Without limitation on the scope of paragraph 17, the requirements which the drainage authority may make under that paragraph include conditions requiring Network Rail 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.

4.—(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) 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 of such works.

(2) Network Rail 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 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 Schedule, the drainage authority may by notice in writing require Network Rail at Network Rail's own expense to comply with the requirements of this Part of this Schedule or (if Network Rail 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.

(4) Subject to sub-paragraph (6) 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 Network Rail, 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 Network Rail.

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

(6) 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, Network Rail 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.

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

(2) If any such drainage work which Network Rail is liable to maintain is not maintained to the reasonable satisfaction of the drainage authority, the drainage authority may by notice in writing require Network Rail to repair and restore the work, or any part of such work, or (if Network Rail 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 sub-paragraph (5) and paragraph 23, if, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on Network Rail, Network Rail 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 incurred by it in so doing from Network Rail.

(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.

6. Subject to paragraph 23, if by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by Network Rail to the reasonable satisfaction of the drainage authority and if Network Rail fails to do so, the drainage authority may make good the same and recover from Network Rail the expense incurred by it in so doing.

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

(2) If by reason of—

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

damage to a fishery is caused, or the Agency has reason to expect that such damage may be caused, the drainage authority may serve notice on Network Rail 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 23, 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, Network Rail fails to take such steps as are described in sub-paragraph (2), the drainage authority may take those steps and may recover from Network Rail the expense reasonably incurred by it in doing so.

(4) Subject to paragraph 23, 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 drainage authority may take such steps as are reasonable for the purpose, and may recover from Network Rail the reasonable cost of so doing provided that notice specifying those steps is served on Network Rail as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

8. Nothing in paragraphs 19(4), 20(3), 21, 22(3) and (4) authorises the drainage authority to execute works on or affecting an operational railway forming part of Network Rail's network without the prior consent in writing of Network Rail such consent not to be unreasonably withheld or delayed.

9. Network Rail 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; and
- (b) in the inspection of the construction of the specified works or any protective works required by the drainage authority under this Part of this Schedule.

10.—(1) Without affecting the other provisions of this Part of this Schedule, Network Rail 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 works or any sewers, drains and watercourses;
- (d) any flooding or increased flooding of any such lands; or
- (e) inadequate water quality in any watercourse or other surface waters or in any groundwater,

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

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

11. The fact that any work or thing has been executed or done by Network Rail 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 Network Rail from any liability under the provisions of this Part of this Schedule.

PART 4

PROTECTIVE PROVISION FOR THE HOBSON'S CONDUIT TRUST

Application

1. The following provisions of this Part of this Schedule have effect unless otherwise agreed in writing between Network Rail and the Trust.

Interpretation

2. In this Part of this Schedule—

“construction”, in relation to any specified work or protective work, includes—

- (a) the execution and placing of that work; and
- (b) any relaying, renewal or maintenance of that work,

and “construct” and “constructed” are construed accordingly;

“detriment” means any damage to the watercourse, including—

- (a) any obstruction of, or interference with, or hindrance or danger to, any use of the watercourse;
- (b) the erosion of the bed or banks of the watercourse, or the impairment of the stability of any works or lands forming part of the watercourse;
- (c) the deposit of materials or the siltation of the watercourse so as to damage the watercourse;
- (d) the pollution of the watercourse;
- (e) any significant alteration in the water level of the watercourse, or significant interference with the supply of water to it, or drainage of water from it (save to the extent that such alteration or interference was otherwise approved by the Trust);
- (f) any harm to the ecology of the watercourse; and
- (g) any interference with the exercise by any person of rights over the watercourse,

“the engineer” means an engineer appointed by the Trust for the purpose in question;

“plans” includes sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction) and programmes;

“practical completion” means practical completion of all of the specified work notwithstanding that items which would ordinarily be considered snagging items remain outstanding, and the expression “practically complete” and “practically completed” are to be construed accordingly;

“protective work” means a work constructed under paragraph 67(3)(a);

“specified work” means so much of any of the authorised works as is situated upon, across, under, over or within 16.5 metres of the watercourse, or may in any way adversely affect the watercourse;

“the Trust” means the Hobson's Conduit Trust;

“the watercourse” means Hobson's Brook and Conduit, and includes any works, lands or premises belonging to the Trust, or under its management or control, that are held or used by the Trust in connection with Hobson's Brook and Conduit.

Exercise of Powers

3.—(1) Network Rail shall not exercise the powers conferred by or under this Order in respect of any watercourse except with the consent of the Trust.

(2) The consent of the Trust under sub-paragraph (1) must not be unreasonably withheld or delayed but may be given subject to reasonable terms and conditions.

4. Network Rail must not use any land or property of the Trust forming part of the watercourse for the passage or siting of vehicles, plant or machinery employed in the construction of a specified work other than—

- (a) with the consent in writing of the engineer whose consent must not be unreasonably withheld; and
- (b) subject to compliance with such reasonable requirements as the engineer may from time to time specify—
 - (i) for the prevention of detriment; or
 - (ii) in order to avoid or reduce any inconvenience to the Trust, its officers and agents and all other persons lawfully on such land or property,

but nothing in this paragraph applies in relation to anything done in accordance with any approval given by the Trust under paragraph 76.

Survey of watercourse

5.—(1) Before the commencement of the initial construction of any part of the specified work and again following practical completion of the specified work Network Rail must bear the reasonable cost of the carrying out by a qualified engineer (“the surveyor”), to be approved by the Trust and Network Rail, of a survey (including a dip-survey to measure the depth of the watercourse and ecological survey) (“the survey”) of so much of the watercourse and of any land and works of Network Rail in existence at the date of the coming into force of this Order which may provide support for the watercourse as will or may be affected by the specified works.

(2) For the purposes of the survey Network Rail must—

- (a) on being given reasonable notice afford reasonable facilities to the surveyor for access to the site of the specified works and to any land and existing works of Network Rail which may provide support for the watercourse as will or may be affected by the specified works; and
- (b) supply the surveyor as soon as reasonably practicable with all such information as the surveyor may reasonably require with regard to such existing works of Network Rail and to the specified works or the method of their construction.

(3) The reasonable costs of the survey must include the costs of any dewatering or reduction of the water level of any part of the watercourse (where reasonably required) which may be effected to facilitate the carrying out of the survey and the provisions of this Part of this Schedule apply with all necessary modifications to any such dewatering or reduction in the water level as though those measures were specified works.

(4) Copies of the report of the survey must be provided to both the Trust and Network Rail at no cost to the Trust.

Notification, approval, protective works

6.—(1) Network Rail must before commencing construction of any specified work including any temporary works supply to the Trust proper and sufficient plans of that work and such further particulars available to it as the Trust may within 14 days of the submission of the plans

reasonably require for the approval of the engineer and must not commence such construction of a specified work until plans of that work are:

- (a) approved in writing by the engineer;
- (b) deemed to have been approved by the engineer pursuant to sub-paragraph (2) below; or
- (c) settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld or delayed, and if within 28 days after such plans (including any other particulars reasonably required under sub-paragraph (1)) have been supplied to the Trust the engineer has not intimated disapproval of those plans and the grounds of disapproval the engineer is deemed to have approved the plans as submitted.

(3) When signifying approval of the plans the engineer may specify—

- (a) any protective work (whether temporary or permanent) which in the reasonable opinion of the engineer should be carried out before the commencement of a specified work to prevent detriment; and
- (b) such other requirements as may be reasonably necessary to prevent detriment,

and such protective works must be constructed by Network Rail or by the Trust at Network Rail's request with all reasonable dispatch and Network Rail must not commence the construction of a specified work until the engineer has notified Network Rail that the protective works have been completed to the engineer's reasonable satisfaction.

7. Network Rail must give to the engineer 14 days' notice of its intention to commence the construction of any of the specified or protective works (unless otherwise agreed in writing by Network Rail and the Trust), save in the case of an emergency in which case Network Rail shall give such notice as may be reasonably practicable.

Carrying out specified works and protective works

8.—(1) Any specified works or protective works must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled in accordance with this Part of this Schedule and with any requirements made under paragraph ~~67~~(3);
- (b) under the supervision (if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little detriment as is reasonably practicable; and
- (d) in such manner as to cause as little inconvenience as is reasonably practicable to the Trust, its officers and agents and all other persons lawfully using the watercourse, except to the extent that temporary obstruction has otherwise been agreed by the Trust.

(2) Nothing in this Order authorises Network Rail to make or maintain any permanent works in or over the watercourse which will reduce the dimensions of the watercourse other than with the written consent of the Trust.

(3) Following the completion of the construction of the specified works Network Rail must restore the watercourse to a condition no less satisfactory than its condition immediately prior to the commencement of those works.

9. Network Rail must not in the course of constructing a specified work or a protective work or otherwise in connection with those works do or permit anything which may result in the pollution of the watercourse or the deposit of materials in it and must take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph.

10. Network Rail must provide and maintain at its own expense in the vicinity of the specified or protective works such temporary lighting as the engineer may reasonably require during the construction of the specified or protective works.

Access

- 11.—(1) Network Rail on being given reasonable notice must—
- (a) at all times allow reasonable facilities to the engineer for access to a specified work during its construction; and
 - (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.
- (2) The Trust on being given reasonable notice must—
- (a) at all times afford reasonable facilities to Network Rail and its agents for access to any works carried out by the Trust under this Part of this Schedule during their construction; and
 - (b) supply Network Rail with such information as it may reasonably require with regard to such works or the method of constructing them and Network Rail must reimburse the Trust's reasonable costs in relation to the supply of such information.

Maintenance of the specified works and protective works

12. If at any time after the completion of a specified work or a protective work, not being a work vested in the Trust, the Trust gives notice to Network Rail informing it that the state of maintenance of the work appears to be such that the work is causing or likely to cause detriment, Network Rail must, on receipt of such notice, take such steps as may be reasonably necessary to put the work in such state of maintenance as not to cause such detriment.

Expenses

- 13.—(1) Subject to sub-paragraph 2, Network Rail must repay to the Trust all fees, costs, charges and expenses reasonably and properly incurred by the Trust—
- (a) in constructing any protective works reasonably required under paragraph ~~67~~(3)(a);
 - (b) in respect of the approval by the engineer of plans submitted by Network Rail and the reasonable supervision by the engineer of the construction or repair of a specified work and any protective works;
 - (c) in respect of the employment during the construction of the specified works or any protective works of any inspectors and other persons whom it is reasonably necessary to appoint for inspecting any watercourse and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction of the specified works or any protective works; and
 - (d) in bringing the specified works or any protective works to the notice of users of the affected watercourse.

(2) Nothing in this paragraph shall impose any liability on Network Rail with respect to any fees, costs, charges and expenses attributable to the act, neglect, default or omission of the Trust or its servants, contractors or agents and any liability of Network Rail under this paragraph shall be reduced proportionately to the extent to which any fees, costs, charges or expenses are attributable to the act, neglect, default or omission of the Trust or its servants, contractors or agents.

Detriment to the watercourse

14. If any detriment to the watercourse is caused by the construction of the specified works or the protective works carried out by Network Rail, Network Rail (if so required by the Trust) must make good such detriment and pay to the Trust all reasonable and proper expenses to which the

Trust may be put, and compensation for any loss which the Trust may sustain, in making good or otherwise by reason of the detriment to the watercourse.

Disputes

15. Any difference arising between Network Rail and the Trust under this Part of this Schedule (other than a difference as to the meaning or construction of the Part of this Schedule) is to be referred to and settled by arbitration in accordance with article 44 (arbitration).

PART 5

FOR THE PROTECTION OF CADENT GAS LIMITED

Application

1. For the protection of Cadent the following provisions will, unless otherwise agreed in writing between Network Rail and Cadent, have effect.

Interpretation

2. In this Part of this Schedule—

"1991 Act" means the New Road and Street Works Act 1991

"acceptable insurance" means third party liability insurance effected and maintained by any person or body (other than the undertaker) who is undertaking a specified work and who is not a licensed operator under the Railway Act 1993, to a level of not less than £50,000,000 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained for the construction period of the authorised works which constitute specified works and arranged with an internationally recognised insurer of repute operating in the London and worldwide insurance market underwriters, such policy shall include (but without limitation):

- (a) Cadent as a Co-Insured;
- (b) a cross liabilities clause; and
- (c) contractors' pollution liability for third party property damage and third party bodily damage arising from a pollution/contamination event with cover of £10,000,000.00 (ten million pounds) per event or £20,000,000.00 (twenty million pounds) in aggregate;

"alternative apparatus" means appropriate alternative apparatus to the satisfaction of Cadent to enable Cadent to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by Cadent for the purposes of gas supply together with any replacement apparatus and such other apparatus constructed pursuant to this Order that becomes operational apparatus of Cadent for the purposes of transmission, distribution or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"Cadent" means Cadent Gas Limited and includes its successors in title or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

"commence" and "commencement" include any below ground surveys, monitoring, work operations, remedial work in respect of any contamination or other adverse ground condition, the receipt and erection of construction plant and equipment, and non-intrusive investigations for the purpose of assessing ground conditions;

"facilities and rights" for construction and for maintenance include any appropriate working areas required to reasonably and safely undertake that construction or maintenance, and any necessary rights of access;

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by Cadent (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for Cadent’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

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

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of Cadent including retain, lay, construct, inspect, maintain, protect, use, access, enlarge, replace, renew, remove, decommission or render unusable or remove the apparatus;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“rights” includes restrictive covenants and, in relation to decommissioned apparatus, the surrender of rights, release of liabilities and transfer of decommissioned apparatus; and

“specified works” means any of the authorised works or activities (including maintenance) undertaken in association with the authorised works which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by Network Rail under sub-paragraph 7(2) or otherwise; or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by Network Rail under sub-paragraph 7(2) or otherwise ; or
- (c) include any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (Cadent's policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of Cadent High pressure Gas pipelines and associated installation requirements for third parties GD/SP/SSW/22”;

“undertaker” means the undertaker as defined in article 2 of this Order.

3.—(1) This Part of this Schedule does not apply to apparatus in respect of which the relations between Network Rail and Cadent are regulated by the provisions of Part 3 of the 1991 Act, except for—

- (a) paragraphs 4, 9, 9(10) and 11; and
- (b) where sub-paragraph (2) applies, paragraphs 7 and 8.

(2) This sub-paragraph applies where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within the existing public highway, notwithstanding that any diversion may be carried out under the provisions of Part 3 of the 1991 Act.

4.—(1) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 11 (temporary stopping up of streets), Cadent will be at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as it would have been entitled to do immediately before such temporary stopping up or diversion in respect of any apparatus which at the time of the stopping up or diversion was in that highway.

5. Network Rail must exercise the powers conferred by article 17 (protective works to buildings) so as not to obstruct or render less convenient the access to any apparatus without the written consent of Cadent (such consent not to be unreasonably withheld).

6.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, Network Rail may not appropriate or acquire any interest in land or appropriate, acquire, extinguish or override any easement or other interest in land of Cadent otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out or maintenance of any part of the authorised works (or in such other timeframe as may be agreed between Cadent and Network Rail) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of Cadent or affect the provisions of any enactment or agreement regulating the relations between Cadent and Network Rail in respect of any apparatus laid or erected in land belonging to or secured by Network Rail, Network Rail must as Cadent reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between Cadent and Network Rail acting reasonably and which must be no less favourable on the whole to Cadent unless otherwise agreed by Cadent, and it will be the responsibility of Network Rail to procure or secure the consent to and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works or maintenance thereof.

(3) Network Rail and Cadent agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus, including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent and other enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Part of this Schedule prevail.

(4) Any agreement or consent granted by Cadent under paragraph 9 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

(5) As a condition of an agreement under sub-paragraph (1) that involves de-commissioned apparatus being left in situ Network Rail must accept a surrender of any existing easement or other interest of Cadent in such decommissioned apparatus and release Cadent from all liabilities in respect of such de-commissioned apparatus from the date of such surrender.

(6) Where Network Rail acquires land which is subject to any Cadent right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 7 do not apply, Network Rail must, unless Cadent agrees otherwise—

- (a) retain any notice of Cadent's easement, right or other interest on the title to the relevant land when registering Network Rail's title to such acquired land; and
- (b) (where no such notice of Cadent's easement, right or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include (with its application to register title to Network Rail's interest in such acquired land at the Land Registry) a notice of Cadent's easement, right or other interest in relation to such acquired land.

7.—(1) If, in the exercise of the powers conferred by this Order, including pursuant to any agreement reached in accordance with paragraph 6, Network Rail acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed under this Part of this Schedule and any right of Cadent to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, is in operation, and the facilities and rights referred to in sub-paragraph (2) have been provided, to the satisfaction of Cadent and in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, Network Rail requires the removal of any apparatus placed in that land, it must give to Cadent advance 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 Cadent reasonably needs to move or remove any of its apparatus) Network Rail must afford to Cadent to its satisfaction (taking into account paragraph 8(1)) the necessary facilities and rights—

- (a) for the construction of alternative apparatus; and
- (b) subsequently for the maintenance of that apparatus.

(3) If Network Rail is unable to afford such facilities and rights as are mentioned in sub-paragraph 8(2)(2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Cadent may, on receipt of a written notice to that effect from Network Rail, take such steps as are reasonable in the circumstances in an endeavour to assist Network Rail in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by Network Rail under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Cadent and Network Rail.

(5) Cadent must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to Cadent of such facilities and rights as are referred to in sub-paragraph (2) or (3), then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by Network Rail to be decommissioned or removed under the provisions of this Part of this Schedule.

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, Network Rail affords to or secures for Cadent facilities and rights in land for the construction, maintenance and access to of alternative apparatus in substitution for apparatus to be decommissioned or removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between Network Rail and Cadent and must be no less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by Cadent.

(2) If the facilities and rights to be afforded by Network Rail and agreed with Cadent under sub-paragraph (1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed then the terms and conditions to which those facilities and rights are subject in the matter may be referred to arbitration in accordance with paragraph 15 of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by Network Rail to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

9.—(1) Not less than 56 days before the commencement of any specified works (or such lesser period as is agreed by Cadent in writing) Network Rail must submit to Cadent a plan and, if reasonably required by Cadent, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to Cadent under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;

- (d) the position of all apparatus;
 - (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
 - (f) any intended maintenance regimes.
- (3) Network Rail must not commence any specified works until Cadent has given written approval of the plan so submitted.
- (4) Any approval of Cadent given under sub-paragraph (3)—
- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5); and
 - (b) must not be unreasonably withheld or delayed and Cadent must meaningfully engage with the undertaker within 56 days of the date of submission of the plan under sub-paragraph (1).
- (5) Cadent may require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.
- (6) Specified works must only be executed in accordance with—
- (a) the plan submitted under sub-paragraph (1), as approved or as amended from time to time by agreement between Network Rail and Cadent; and
 - (b) all conditions imposed under sub-paragraph (4)(a), and Cadent will be entitled to watch and inspect the execution of those works.
- (7) Where Cadent requires any protective works to be carried out by itself or by Network Rail (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Cadent's satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required prior to commencement.
- (8) If Cadent, in consequence of the works proposed by Network Rail, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs (1) to (3) and (6) to (8) apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).
- (9) Nothing in this paragraph precludes Network Rail from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.
- (10) At all times when carrying out any works authorised under the Order the undertaker must comply with the Cadent's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of Cadent High pressure Gas pipelines and associated installation requirements for third parties SPGD/SP /SSW22" and HSE's "HS(~G)47 Avoiding Danger from underground services.
- (11) As soon as reasonably practicable after any ground subsidence event attributable to the authorised works (including such an event attributable to its maintenance)—
- (a) Network Rail must implement an appropriate ground mitigation scheme; and
 - (b) Cadent retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 9(10)(10).
- (12) Network Rail is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works and must comply with the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances and sub paragraph (10) at all times.

(13) In this paragraph, “*emergency works*” means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

10.—(1) Subject to the following provisions of this paragraph, Network Rail must pay to Cadent on demand, all charges, costs and expenses reasonably anticipated or reasonably incurred by Cadent in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by Cadent in connection with the necessary acquisition of rights or the necessary exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by Cadent as a consequence of Cadent;
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 7(3) if it elects to do so; or
 - (ii) exercising any necessary compulsory purchase powers under this Order transferred to or benefitting Cadent;
- (b) in connection with the cost of the carrying out of any necessary diversion work or the provision of any necessary alternative apparatus;
- (c) the necessary cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of necessary protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule;
- (g) any watching brief pursuant to sub-paragraph 9(6).

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, 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 situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by Network Rail or, in default of agreement, is not determined by arbitration in accordance with paragraph 15 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 Cadent by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible or appropriate in the circumstances (or it would be unlawful due to a statutory or regulatory change) to obtain the

existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by Network Rail.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus will 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 pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will 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 Cadent in respect of works by virtue of sub-paragraph (1) will, 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 Cadent 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.

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised works (including works carried out under article 17 (protective works to buildings)) by or on behalf of Network Rail or in consequence of any act or default of Network Rail (or any person employed or authorised by Network Rail) in the course of carrying out such works, including without limitation works carried out by Network Rail under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or decommissioning for the purposes of the authorised works) or property of Cadent, or there is any interruption in any service provided, or in the supply of any goods, by Cadent, or Cadent becomes liable to pay any amount to any third party, Network Rail will—

- (a) bear and pay on demand accompanied by an invoice or claim from Cadent, the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and
- (b) indemnify Cadent for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Cadent, by reason or in consequence of any such damage or interruption or Cadent becoming liable to any third party as aforesaid other than arising from any default of Cadent.

(2) The fact that any act or thing may have been done by Cadent on behalf of Network Rail or in accordance with a plan approved by Cadent or in accordance with any requirement of Cadent or under its supervision including under any watching brief will not (unless sub-paragraph (3) applies) excuse Network Rail from liability under the provisions of this sub-paragraph (1) unless Cadent fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on Network Rail in respect of any damage or interruption to the extent that it is attributable to the neglect or default of Cadent, its officers, servants, contractors or agents.

(4) Cadent must give Network Rail reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting Network Rail and considering their representations.

(5) If Network Rail has transferred the benefit of the Order to another undertaking pursuant to Article 31 of the Order no person or body who is not a licensed operator under the Railway Act 1993 must commence construction (or permit the commencement of such construction) of the authorised works on any land owned by Cadent or in respect of which Cadent has an easement or

wayleave for its apparatus or any other interest or to carry out any works within 15 metres in any direction of Cadent's apparatus unless and until Cadent is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to Cadent that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and Cadent has confirmed the same in writing to the undertaker.

12. Except where this Part of this Schedule provides otherwise, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between Network Rail and Cadent in respect of any apparatus laid or erected in land belonging to Network Rail on the date on which this Order is made.

13.—(1) Where in consequence of the proposed construction of any part of the authorised works, Network Rail or Cadent requires the removal of apparatus under paragraph 7(2) or Cadent makes requirements for the protection or alteration of apparatus under paragraph 9, Network Rail must use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of Cadent's undertaking and Cadent must use its best endeavours to co-operate with Network Rail for that purpose.

(2) Whenever Cadent's consent, agreement or approval is required in relation to plans, documents or other information submitted by Cadent or the taking of action by Cadent, it must not be unreasonably withheld or delayed.

14. If in consequence of any agreement reached in accordance with paragraph 6(1) or the powers conferred by this Order the access to any apparatus is materially obstructed, Network Rail must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction.

15. Save for differences or disputes arising under sub-paragraphs 7(2), 7(4), 8(1), 11(5) and paragraph 9 any difference or dispute arising between Network Rail and Cadent under this Part of this Schedule must, unless otherwise agreed in writing between Network Rail and Cadent, be determined by arbitration in accordance with article 44 (Arbitration).

16. Notwithstanding [article 41] (Service of Notices) any plans submitted to Cadent by Network Rail pursuant to paragraph 9(1) must be sent via email to plantprotection@cadentgas.com copied by e-mail to vicky.cashman@cadentgas.com and sent to the General Counsel Department at Cadent's registered office or such other address as Cadent may from time to time appoint instead for that purpose and notify to Network Rail in writing.

PART 6

FOR THE PROTECTION OF CAMBRIDGESHIRE COUNTY COUNCIL IN RESPECT OF THE GUIDED BUSWAY

Application

1. The provisions of this Part of this Schedule shall have effect unless otherwise agreed in writing between the operator and Network Rail.

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

Interpretation

3. In this Part of this Schedule—

“approval” in relation to specified works means approval by the engineer appointed by the operator (such approval not to be unreasonably withheld or delayed);

“construction” includes execution, placing, altering, replacing, relaying, removal and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by the operator for the purpose in question;

“guided busway” means a way provided for the use of vehicles which are constructed or adapted to carry more than eight passengers for hire or reward and use a mode prescribed in article 2(e), (f), (g) or (h) of the Transport and Works (Guided Transport Modes) Order 1992(h) or a mode which is track-based or road-based and prescribed in any subsequent order made under s.2 of the 1992 Act;

“guided busway property” means any guided busway belonging to the operator, any works, apparatus and equipment of the operator connected with any such guided busway and any land or premises belonging to or used by the operator for the purposes of any such guided busway, works, apparatus or equipment which also includes any accesses, maintenance tracks, cycleway and/or footpaths which form part of the guided busway property;

“guided busway service” means the service provided by the operator for the carriage of passengers via the guided busway;

“maintaining” means works of maintenance and repair that are material to the structures and safe operation of guided busway property;

“operator” means Cambridgeshire County Council or any other person to whom the operator has disposed of any guided busway pursuant to a statutory power, including article 48 of the Cambridgeshire Guided Busway Order 2005 (S.I. 2005/3523);

“plans” includes sections, designs, design data, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, method statements and programmes and details of the extent, timing and duration of any proposed occupation of guided busway property; and

“specified works” means so much of any of the authorised works as may be situated within 15 metres (measured in any direction) of guided busway property or may in any way adversely affect the guided busway property.

Exercise of Powers

4.—(1) Network Rail must not exercise the powers conferred by or under this Order in respect of any guided busway property except with the consent of the operator.

(2) Network Rail must not by or under the powers of this Order—

- (a) acquire or enter upon;
 - (b) take or use, whether temporarily or permanently;
 - (c) acquire any new right over or under; or
 - (d) acquire any subsoil of or airspace over,
- any guided busway property except with the consent of the operator.

(3) Network Rail must not by or under the powers of this Order extinguish any existing rights of the operator in respect of any third party property, except with the consent of the operator.

(4) Where the operator is asked to give its consent pursuant to sub-paragraphs (1), (2) or (3), such consent must not be unreasonably withheld but may be given subject to reasonable conditions (or where there is any dispute as to such conditions, subject to such conditions as settled by arbitration in accordance with paragraph 19).

(5) Network Rail must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any guided busway property, unless preventing such access is with the consent of the operator.

Guided busway property: notification, protective works

5.—(1) Subject to sub-paragraph (2), Network Rail must give to the engineer not less than 28 days' notice of its intention to:

- (a) commence the construction of any of the specified works; and
- (b) carry out any works for the repair or maintenance of the specified works in so far as such works of repair or maintenance affect or interfere with the guided busway property.

(2) Network Rail is not required to comply with sub-paragraph (1) in a case of emergency but in that case Network Rail must give to the operator notice as soon as is reasonably practicable.

6.—(1) Not less than 28 days before commencing the specified works, Network Rail must submit to the operator proper and sufficient plans of the specified works for the approval of the engineer.

(2) Network Rail must not commence the specified works until the plans of the specified works submitted under sub-paragraph (1) are:

- (a) approved in writing by the engineer;
- (b) deemed to have been approved by the engineer pursuant to sub-paragraph (3) below; or
- (c) settled by arbitration.

(3) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans were provided to the operator the engineer has not notified Network Rail of their disapproval of those plans and the grounds of their disapproval the engineer Network Rail may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 14 days beginning with the date upon which the engineer receives written notice from Network Rail. If by the expiry of the further 14 days the engineer has not intimated approval or disapproval, the engineer will be deemed to have approved the plans as submitted.

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's reasonable opinion should be carried out before the commencement of the specified works to ensure the safety or stability of guided busway property or the continuation of safe and efficient operation of any guided busway belonging to the operator (including any relocation or removal of works, apparatus and equipment necessitated by the specified works, or for the comfort and safety of passengers who may be affected by the specified works), and any such protective works as may be reasonably necessary

for those purposes must be constructed by the operator or by Network Rail, at the election of the operator, in accordance with paragraphs 7 to 9 and such protective works must be carried out at the expense of Network Rail in either case without unnecessary delay. Network Rail must not commence the construction of the specified works until the engineer has notified Network Rail that the protective works have been completed to their reasonable satisfaction.

(5) The engineer must inspect the protective works and notify Network Rail that the protective works have been completed to their reasonable satisfaction or otherwise, as soon as reasonably practicable after the protective works have been completed.

Carrying out protective works and specified works

7.—(1) Any specified works and any protective work specified pursuant to paragraph 6(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 6;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause:
 - (i) as little damage as is reasonably practicable to the guided busway property; and
 - (ii) as little interruption as is reasonably practicable to the guided busway service.

Access

8.—(1) Network Rail must on being given reasonable notice (save in the event of an emergency):

- (a) at all times afford reasonable facilities to the engineer for access to the specified works during their construction;
- (b) supply the engineer with all such information as the engineer may reasonably require with regard to those specified works or the method of their construction.

9.—(1) The operator must on being given reasonable notice (save in the event of an emergency):

- (a) at all times afford reasonable facilities to Network Rail and its agents for access to any works carried out by the operator under this Part of this Schedule during their construction; and
- (b) supply Network Rail with all such information as it may reasonably require with regard to such works or the method of their construction.

Damage to guided busway property: costs, losses etc.

10.—(1) Network Rail must pay to the operator all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by the operator—

- (a) by reason of the construction or maintenance of a specified work or a protective work or the failure of it; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work or a protective work,

and Network Rail must indemnify and keep indemnified the operator from and against all claims and demands arising out of or in connection with a specified work or a protective work or any such failure, act or omission and the fact that any act or thing may have been done by the operator on behalf of the operator or in accordance with plans approved by the engineer or in accordance

with any requirement of the engineer or under his supervision will not (if it was done without negligence on the part of the operator or of any person in its employ or of its contractors or agents) excuse Network Rail from any liability under the provisions of this sub-paragraph.

(2) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand is to be made without the prior consent of Network Rail.

(3) The sums payable by the undertaker under sub-paragraph 10(1)(1) may include a sum equivalent to the relevant costs that the operator has reasonably incurred in order to ensure the ongoing provision of the guided busway service or other local services to provide an equivalent transport connectivity as was provided by the guided busway service along any guided busway which is temporarily or permanently unavailable as a result of any of the matters in sub-paragraph (1) provided always that the operator shall not incur any costs pursuant to this paragraph (3) until it first notifies Network Rail of its proposals to ensure continuity of service in the event the guided busway is temporarily or permanently unavailable (such alternative provision to be reasonable having regard to the extent of time the guided busway will be unavailable) and shall take into account representations made by Network Rail.

(4) Subject to the terms of any agreement between the operator and any provider of the guided busway service regarding the timing or method of payment of the relevant costs in respect of that provider, the operator must promptly pay to each provider the amount of any sums which the operator receives under sub-paragraph (3) which relates to the relevant costs of that provider

(5) The obligation under sub-paragraph (3) to pay the operator the relevant costs will, in the event of default, be enforceable directly by any provider concerned to the extent that such sums would be payable to that provider under sub-paragraph (4).

(6) Nothing in this paragraph 10 shall impose any liability on Network Rail with respect to any fees, costs, charges and expenses attributable to the act, neglect, default or omission of the operator or its servants, contractors or agents and any liability of Network Rail under this paragraph shall be reduced proportionately to the extent to which any fees, costs, charges or expenses are attributable to the act, neglect, default or omission of the operator or its servants, contractors or agents.

(7) In this paragraph—

(8) “the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each provider of the guided busway service as a consequence of any restriction of the use of any guided busway as a result of the construction, maintenance or failure of a specified work or a protective work or any such act or omission as mentioned in sub-paragraph (1); and

(9) “provider of the guided busway service” means any person who is authorised to provide local services using a guided busway pursuant to agreements with the operator.

Expenses

11.—(1) Network Rail must repay to the operator all reasonable and proper fees, costs, charges and expenses reasonably incurred by the operator—

- (a) in constructing any part of the specified works on behalf of Network Rail or any protective works under the provision of paragraph 6(4) above including in respect of any permanent protective works, a capitalised sum representing the costs which may be expected to be reasonably and properly incurred by the operator in maintaining and renewing such works;
- (b) in respect of the employment or procurement of the services of any inspectors, supervisory staff and other persons whom it is reasonably necessary to appoint for inspecting, signalling, monitoring and lighting guided busway property in order to

- prevent, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction of the protective works or specified works;
- (c) resulting from any speed restrictions which in the reasonable opinion of the engineer are necessary by reason or in consequence of the construction of the protective works or specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason;
- (d) in respect of any additional temporary lighting of guided busway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction of the specified works; and
- (e) in respect of the approval by the engineer of plans submitted by Network Rail and the supervision by the engineer of the construction of the protective works or specified works.

Maintenance of the specified works

12. If at any time after the completion of a specified work, not being a work vested in the operator, the operator gives notice to Network Rail informing it that the state of maintenance of the specified work appears to be such as adversely affects the operation of guided busway property, Network Rail must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as to not adversely affect guided busway property.

Assessment of sums payable

13. In the assessment of any sums payable to the operator under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by the operator if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by Network Rail under this Part of this Schedule or increasing the sums so payable.

Agreements

14.—(1) Network Rail and the operator may enter into, and carry into effect, agreements for the transfer to Network Rail of—

- (a) any guided busway property shown on the deposited plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such guided busway property; and
- (c) any rights and obligations (whether or not statutory) of the operator relating to any guided busway property,

and any such agreement may as relevant take effect as a disposal under article 47 of the Cambridgeshire Guided Busway Order 2005, but the consent of the Secretary of State under paragraph (1) of that article will not be required in relation to such a disposal.

Transfer of undertaking

15. Network Rail must give written notice to the operator if any application is proposed to be made by Network Rail for the Secretary of State's consent, under article 31 (Power to Transfer Undertaking) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;

- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

Certified documents

16. Network Rail must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 40 (certification of plans etc.) are certified by the Secretary of State, provide a set of those plans to the operator in a format specified by the operator.

Disputes

17. Any difference arising between Network Rail and the operator under this Part of this Schedule (other than a difference as to the meaning or construction of the Part of this Schedule) is to be referred to and settled by arbitration in accordance with article 44 (arbitration).

PART 7

FOR THE PROTECTION OF SOUTH STAFFORDSHIRE WATER PLC

Application

1. For the protection of SSW the following provisions have effect unless otherwise agreed in writing between Network Rail and SSW.

2. The provisions of paragraph 1 of Schedule 11 (Provisions Relating to Statutory Undertakers, etc.), in so far as they relate to the removal of apparatus, do not apply in relation to apparatus to which this Part of this Schedule applies.

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

Interpretation

4. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable SSW to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) mains, pipes or other apparatus belonging to or maintained by SSW for the purposes of water supply;
- (b) any drain or works vested in SSW under the Water Industry Act 1991; and
- (c) any sewer which is so vested in SSW or is the subject of a notice of intention to adopt by SSW given under section 102(4) of that Act or an agreement to adopt by SSW made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

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

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

“SSW” means South Staffordshire Water Plc and includes its successors in title or any successor as a water undertaker within the meaning of the Water Industry Act 1991.

Acquisition of apparatus

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

Alternative apparatus

6.—(1) If, in the exercise of the powers conferred by this Order, Network Rail acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule, and any right of SSW 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 SSW.

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

(3) The proposed position of the alternative apparatus to be provided or constructed is subject to approval by SSW (such approval not to be unreasonably withheld or delayed). In the event that SSW (acting reasonably) considers the proposed position of the alternative apparatus to be unsuitable, SSW shall (acting reasonably) propose an alternative position for the alternative apparatus and must give Network Rail written notice of such alternative position for the alternative apparatus within 28 days of the service of a notice under sub-paragraph (2). Any dispute regarding the alternative apparatus (including but not limited to the proposed position and/or the alternative proposed position) which cannot be agreed between the parties is to be determined in accordance with article 44 (arbitration).

(3a) Any alternative apparatus to be constructed in land of Network Rail under this Part of this Schedule is to be constructed in such manner and in such line or situation as may be agreed between SSW and Network Rail such agreement to be within 28 days of the service of a notice under sub-paragraph (2) (or within 28 days of service of a notice under sub-paragraph (3) where SSW has proposed an alternative position for the alternative apparatus under sub-paragraph (3) which is acceptable to Network Rail), or in default of such agreement settled by arbitration in accordance with article 44 (arbitration).

(4) In any case where alternative apparatus is to be provided or constructed under sub-paragraphs (2) or (3), or if in consequence of the exercise of any of the powers conferred by this Order SSW reasonably needs to remove any of its apparatus, Network Rail must, subject to sub-paragraph (5), afford to SSW the necessary facilities and rights for the construction of alternative apparatus in other land of Network Rail and subsequently for the maintenance of that apparatus and SSW shall be entitled to recover its reasonable costs incurred in securing such necessary facilities and rights from Network Rail subject to paragraph 9(3) below.

(5) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of Network Rail, or Network Rail is unable to afford such facilities and rights as are mentioned in sub-paragraph (4), in the land in which the alternative apparatus or part of such apparatus is to be constructed, SSW must, on receipt of a written notice to that effect from Network Rail, as soon as reasonably possible use reasonable endeavours (having regard to its statutory powers) to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(6) SSW must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 44, and after the grant to SSW of any such facilities and rights as are referred to in sub-paragraph (4) or (5), proceed without unreasonable delay (having regard to the operational requirements of SSW) to construct and bring into operation the alternative apparatus

(7) Regardless of anything in sub-paragraph (6), if Network Rail gives notice in writing to SSW 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 Network Rail, that work, instead of being executed by SSW, must be executed by Network Rail without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of SSW.

(8) Nothing in sub-paragraph (7) authorises Network Rail to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 3 metres of the apparatus without the written consent of SSW (such consent not to be unreasonably withheld or denied).

(9) In relation to any works which will or may be situated on, over or within 3 metres measured in any direction of any apparatus, the plan to be submitted to SSW under sub-paragraph (1) must be detailed, include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which they are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation and positioning of plant;
- (d) the position of all apparatus including existing apparatus and apparatus to be retained;
- (e) by way of detailed drawings, every alteration proposed to be made to such apparatus; and
- (f) any maintenance required.

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, Network Rail affords to SSW facilities and rights for the construction and maintenance in land of Network Rail of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between Network Rail and SSW or in default of agreement settled by arbitration in accordance with article 44 (arbitration).

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

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

(3) In settling those terms and conditions in respect of alternative apparatus to be constructed within 3 metres of any existing apparatus of SSW, the arbitrator must—

- (a) give effect to all reasonable requirements of SSW for ensuring the protection of the existing apparatus and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with the existing apparatus; 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 existing apparatus for which the alternative apparatus is to be substituted.

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

Existing apparatus: protection and access

8.—(1) Not less than 42 days before starting the execution of any of the authorised works that are near to, or will or may affect, any apparatus the removal of which has not been required by Network Rail under paragraph 6(2), Network Rail must submit to SSW 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 SSW for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and an officer of SSW is entitled to watch and inspect the execution of those works.

(3) Any requirements made by SSW under sub-paragraph (2) must be made within a period of 28 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

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

(5) Nothing in this paragraph precludes Network Rail from submitting at any time or from time to time, but in no case less than 42 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) Network Rail is not required to comply with sub-paragraph 8(1)(1) in a case of emergency but in that case it must give to SSW notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

Expenses

9.—(1) Subject to the following provisions of this paragraph, Network Rail must repay to SSW the reasonable expenses incurred by SSW in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus (including costs or compensation payable in connection with the acquisition of land for that purpose) which may be required in consequence of the execution of any of the authorised works.

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

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

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions except where this has been solely due to using the nearest currently available type; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by Network Rail or, in default of agreement, is not determined by arbitration in accordance with article 44 (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 type, capacity, dimensions, or at the existing depth required to maintain the existing operational requirement, as the case may be, the amount which apart from this paragraph would be payable to SSW by virtue of sub-paragraph (1) is to be reduced by the amount of that excess (save to the extent that it is not possible in the circumstances (or it would be unlawful due to a statutory or regulatory change) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth).

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

(6) Any dispute as to whether a financial benefit is conferred in accordance with sub-paragraph (5) or as to the amount of such financial benefit which cannot be agreed is to be determined in accordance with article 44 (arbitration).

Damage to apparatus: costs, losses, etc.

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

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

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

(3) SSW must give Network Rail reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of Network Rail (such consent not to be unreasonably withheld or delayed) and in the event of any dispute to be settled by arbitration in accordance with article 44 (arbitration).

Enactments and agreements

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