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STATUTORY INSTRUMENTS

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**2013 No. 1967**

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

**The Croxley Rail Link Order 2013**

*Made* - - - - 31st July 2013

*Coming into force* - - 21st August 2013

An application has been made to the Secretary of State in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006<sup>(1)</sup> for an Order under sections 1, 3 and 5 of the Transport and Works Act 1992<sup>(2)</sup> (“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The Secretary of State, having considered the objections made and not withdrawn and the report of the person who held the inquiry, has determined to make an Order giving effect to the proposals comprised in the application with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 30th July 2013.

The Secretary of State, in exercise of the powers conferred by sections 1, 3 and 5 of, and paragraphs 1 to 5, 7, 8, 10, 11, 15 and 16 of Schedule 1 to, the 1992 Act, makes the following Order:—

**PART 1**

*Preliminary*

**Citation and commencement**

**1.** This Order may be cited as the Croxley Rail Link Order 2013 and comes into force on 21st August 2013.

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(1) [S.I. 2006/1466](#).

(2) [1992 c. 42](#). Relevant amending instruments are [S.I. 1995/1541](#), [S.I. 1998/2226](#), [S.I. 2000/3199](#) and [S.I. 2006/958](#).

## Interpretation

### 2.—(1) In this Order—

- “the 1961 Act” means the Land Compensation Act 1961<sup>(3)</sup>;
- “the 1965 Act” means the Compulsory Purchase Act 1965<sup>(4)</sup>;
- “the 1990 Act” means the Town and Country Planning Act 1990<sup>(5)</sup>;
- “the 1991 Act” means the New Roads and Street Works Act 1991<sup>(6)</sup>;
- “address” includes any number or address used for the purposes of electronic transmission;
- “authorised works” means the scheduled works and any other works authorised by this Order;
- “the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;
- “building” includes any structure or erection or any part of a building, structure or erection;
- “carriageway” has the same meaning as in the Highways Act 1980<sup>(7)</sup>;
- “the Council” means Hertfordshire County Council;
- “the Croxley Rail Link” means a railway transport system extending the London Underground Metropolitan Line services from Croxley to Watford Junction;
- “deposited plans” means the plans certified by the Secretary of State as the deposited plans for the purposes of this Order;
- “the deposited sections” means the sections certified by the Secretary of State as the deposited sections for the purposes of this Order;
- “electronic transmission” means a communication transmitted—
- (a) by means of an electronic communications network; or
  - (b) by other means but while in electronic form;
- “footway” has the same meaning as in the Highways Act 1980;
- “highway” and “highway authority” have the same meaning as in the Highways Act 1980;
- “the limits of deviation” means the limits of deviation for the scheduled works shown on the deposited plans;
- “the limits of land to be acquired or used” means the limits of land to be acquired or used shown on the deposited plans;
- “LUL” means London Underground Limited (Company registration number 01900907) whose registered office is at 55 Broadway, London, SW1H 0BD;
- “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 Kings Place, 90 York Way, London, N1 9AG;
- “the Order limits” means the limits of deviation and the limits of land to be acquired or used;
- “owner”, in relation to land, has the same meaning as in the Acquisition of Land Act 1981<sup>(8)</sup>;
- “the scheduled works” means the works specified in Schedule 1 (scheduled works) or any part of them;

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<sup>(3)</sup> 1961 c. 33.

<sup>(4)</sup> 1965 c. 56.

<sup>(5)</sup> 1990 c. 8.

<sup>(6)</sup> 1991 c. 22. As amended by the Traffic Management Act 2004 c. 18.

<sup>(7)</sup> 1980 c. 66.

<sup>(8)</sup> 1981 c. 67.

“street” includes part of a street;

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

“the tribunal” means the Upper Tribunal; and

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

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

(3) Any reference in this Order to a work identified by the number of the work is to be construed as a reference to the work of that number authorised by this Order.

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

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

(6) All distances, directions and lengths stated in the description of the scheduled works or in any description of powers or lands are approximate, and distances between points on a scheduled work are taken to be measured along the scheduled work.

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

**3.—**(1) The following provisions of the Railways Clauses Consolidation Act 1845<sup>(9)</sup> are incorporated in this Order—

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

section 68 (accommodation works by company);

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

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

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

sections 78 to 85E and Schedules 1 to 3 (minerals under railways), as respectively substituted and inserted by section 15 of the Mines (Working Facilities and Support) Act 1923<sup>(10)</sup>;

section 103 (refusal to quit carriage at destination);

section 105 (carriage of dangerous goods on railway); and

section 145 (recovery of penalties).

(2) Section 12 (signals, watchmen etc.) of the Railways Clauses Act 1863<sup>(11)</sup> is incorporated in this Order.

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

“the company” means the Council;

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

“lease” includes an agreement for a lease;

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

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<sup>(9)</sup> 1845 c. 20.

<sup>(10)</sup> 1923 c. 20.

<sup>(11)</sup> 1863 c. 92.

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

“the special Act” means this Order; and

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

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

4.—(1) The provisions of the 1991 Act mentioned in paragraph (2) which, together with other provisions of that Act, apply in relation to the execution of street works and any regulations made or code of practice issued or approved under those provisions apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the Council under the powers conferred by article 9 (temporary stopping up of streets) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(2) The provisions of the 1991 Act referred to in paragraph (1) are—

section 54 (advance notice of certain works), subject to paragraph (3);

section 55 (notice of starting date of works), subject to paragraph (3);

section 57 (notice of emergency works);

section 59 (general duty of street authority to co-ordinate works);

section 60 (general duty of undertakers to co-operate);

section 68 (facilities to be afforded to street authority);

section 69 (works likely to affect other apparatus in the street);

section 76 (liability for cost of temporary traffic regulation);

section 77 (liability for cost of use of alternative route); and

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

(3) Sections 54 and 55 of the 1991 Act as applied by paragraph (1) 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.

(4) Nothing in article 11 (construction and maintenance of new or altered streets)—

(a) affects the operation of section 87 of the 1991 Act (prospectively maintainable highways); and the Council 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.

## **PART 2**

### **WORKS PROVISIONS**

#### *Principal Powers*

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

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

(2) Subject to article 6 (power to deviate), the scheduled works may only be constructed in the lines or situations shown on the deposited plans and in accordance with the levels shown on the deposited sections.

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

- (a) railway electrification and signalling works;
- (b) approaches, bridges, ramps, means of access, footpaths, shafts and stagings;
- (c) embankments, aprons, abutments, retaining walls, wing walls, drainage and culverts;
- (d) works to alter the position of apparatus, including mains, sewers, drains and cables; and
- (e) works to alter the course of, or otherwise interfere with, a watercourse other than (except as provided by article 15 (temporary interference with waterways)), a navigable watercourse.

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

(5) Paragraphs (3) and (4) only authorise the carrying out or maintenance of works outside the limits of deviation if such works are carried out on land specified in columns (1) and (2) of Schedule 2 (acquisition of certain lands for ancillary works) for the purpose specified in relation to that land in column (3) of that Schedule.

(6) The Council may within the Order limits—

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

### **Power to deviate**

6. In constructing or maintaining any of the scheduled works, the Council 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, not exceeding 3 metres in relation to station buildings and 1 metre in relation to any other work; or
  - (ii) to any extent downwards as may be found to be necessary or convenient.

### *Streets*

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

7.—(1) The Council may, for the purposes of the authorised works, enter upon any of the streets 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, or tunnel or bore under the street;
- (b) place apparatus in the street;
- (c) maintain apparatus in the street or change its position; and

- (d) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b) and (c).

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

### **Stopping up of street**

**8.—**(1) Subject to the provisions of this article, the Council may, in connection with the construction of the authorised works, stop up the street specified in columns (1) and (2) of Schedule 3 (street to be stopped up) to the extent specified, in column (3) of that Schedule.

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

- (a) all rights of way over or along the street stopped up are extinguished; and
- (b) the Council may appropriate and use for the purposes of the Croyley Rail Link so much of the site of the street as is stopped up.

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

(4) This article is subject to paragraph 2 of Schedule 8 (provisions relating to statutory undertakers etc.).

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

**9.—**(1) The Council, 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), the Council may use any street stopped up under the powers conferred by this article within the Order limits as a temporary working site.

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

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

(5) The Council 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.

### **Access to works**

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

- (a) form and lay out means of access, alter or improve existing means of access, in the locations marked on the deposited plans; and

- (b) form and lay out such other means of access or alter or improve existing means of access, at such locations within the Order limits as the Council reasonably requires for the purposes of the authorised works, as may be approved by the highway authority, but such approval must not be unreasonably withheld.

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

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

(2) Paragraph (1) does not apply in relation to the structure of any bridge carrying a street over or under any railway of the Council.

(3) In any action against the Council in respect of loss or damage resulting from any failure by it to maintain a street 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 the Council had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(4) For the purposes of a defence under paragraph (3), the court must in particular have regard to the following matters—

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

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

### **Use of private roads for construction**

**12.**—(1) The Council 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 of the authorised works.

(2) The Council must compensate the person liable for the repair of a road to which paragraph (1) applies for any loss which that person may suffer by reason of the exercise of the power conferred by 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 and in accordance with Part 1 of the 1961 Act.

### *Supplemental powers*

#### **Discharge of water**

**13.**—(1) The Council may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction, maintenance or operation 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 of the Water Industry Act 1991(**12**).

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

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

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

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

(5) The Council 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) The Council 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) of the Environmental Permitting (England and Wales) Regulations 2010(**13**).

(8) If a person who receives an application for consent or approval fails to notify the Council 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 the Environment Agency, an internal drainage board, a local authority or a sewerage undertaker; and

(b) other expressions, excluding watercourses, used both in this article and in the Water Resources Act 1991(**14**) have the same meaning as in that Act.

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

**14.**—(1) The Council 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 in such positions as the Council thinks fit on the land to investigate the nature of the surface layer and subsoil and remove soil samples;

(c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land;

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(12) 1991 c. 56.

(13) S.I. 2010/675.

(14) 1991 c. 57.

- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes; and
  - (e) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (d).
- (2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1), unless at least 7 days' notice has been served on every owner and occupier of the land.
- (3) Any person entering land under this article on behalf of the Council—
- (a) must, if so required, before or after entering the land produce written evidence of authority to do so; and
  - (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.
- (4) No trial holes 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.
- (5) The Council 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.
- (6) Nothing in this article overrides the requirement for scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979(15).
- (7) If either a highway authority or a street authority fails to notify the Council of its decision within 14 days of receiving the application for consent under paragraph (4) that authority is deemed to have granted consent.

### **Temporary interference with waterways**

**15.**—(1) Without limitation on the scope of the powers conferred by article 5 (power to construct and maintain works), and subject to Part 5 (protection for the Canal & River Trust) of Schedule 9 (protective provisions) the Council may in connection with the construction of the authorised works —

- (a) temporarily interfere with the waterway, by constructing or maintaining temporary works at any point within the Order limits as it considers necessary or expedient;
  - (b) temporarily moor or anchor barges or other vessels or craft in the waterway, load or unload into and from such barges, other vessels or craft equipment, machinery, soil and any other materials in connection with the construction of the authorised works; and
  - (c) temporarily close any part of the waterway within the Order limits to navigation.
- (2) The power conferred by paragraph (1)(c) must be exercised in a way which secures—
- (a) that no more of the waterway is closed to navigation at any time than is necessary in the circumstances; and
  - (b) that, if complete closure of a part of the waterway to navigation becomes necessary, all reasonable steps are taken to secure that the minimum obstruction, delay or interference is caused to vessels or craft which may be using or intending to use the waterway.
- (3) Any person who, as a result of the exercise of powers conferred by this article, suffers loss by reason of the interference with any private right of navigation is entitled to compensation to be paid by the Council to be determined, in case of dispute, under Part 1 of the 1961 Act.

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(15) 1979 c. 46.

(4) During any period of interference or temporary closure referred to in paragraph (1), all rights of navigation and other rights relating to, and any obligations of the Canal & River Trust to manage, the part of the waterway so interfered with or closed are suspended and unenforceable against the Canal & River Trust.

(5) In this article “the waterway” means the Grand Union Canal.

## PART 3

### ACQUISITION AND POSSESSION OF LAND

#### *Powers of acquisition*

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

**16.**—(1) The Council may acquire compulsorily—

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

and may use any land so acquired for those purposes or for any other purposes that are ancillary to the Croxley Rail Link.

(2) Section 8 (sale, etc., of land used as allotments) of the Allotments Act 1925<sup>(16)</sup> does not apply to the acquisition under this Order of the land shown numbered 73a on the deposited plans.

(3) The powers of this article do not apply to plots 22, 73 and 74.

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

**17.**—(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<sup>(17)</sup> 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 as if section 4 (which provides a time limit for compulsory purchase of land) and paragraph 3(3) of Schedule 3 (which makes provision as to the giving of bonds) were omitted.

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

**18.**—(1) The Compulsory Purchase (Vesting Declarations) Act 1981<sup>(18)</sup> applies as if this Order were a compulsory purchase order.

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

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<sup>(16)</sup> 1925 c. 61.

<sup>(17)</sup> 1981 c. 67.

<sup>(18)</sup> 1981 c. 66.

- (3) In section 3 (preliminary notices) for subsection (1) there is substituted—
- “(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority must include the particulars specified in subsection (3) in a notice which is—
- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
  - (b) published in a local newspaper circulating in the area in which the land is situated.
- (4) In that section, in subsection (2), for “(1)(b)” there is substituted “(1)” and after “given” there is inserted “and published”.
- (5) In that section, for subsections (5) and (6) there is substituted—
- “(5) For the purposes of this section, a person has a relevant interest in land if—
- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
  - (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”
- (6) In section 5 (earliest date for execution of declaration)—
- (a) in subsection (1), after “publication” there is inserted “in a local newspaper circulating in the area in which the land is situated”; and
  - (b) subsection (2) is omitted.
- (7) In section 7 (constructive notice to treat) in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” are omitted.
- (8) References to the 1965 Act are construed as references to that Act as applied to the acquisition of land under article 16 (power to acquire land).

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

**19.**—(1) The Council may acquire compulsorily such easements or other rights over any land referred to in paragraph (1)(a) or (b) of article 16 (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) The Council may impose restrictive covenants affecting any land referred to in paragraph (1) (a) or (b) of article 16 which is or will, on completion of the authorised works, lie beneath the authorised railway where it is running on the viaduct comprised in Work No. 1 as may be required for the purpose of protecting the authorised railway.

(3) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 5 (modification of compensation and compulsory purchase enactments for creation of new rights)) where the Council acquires a right over land or the benefit of a restrictive covenant over land under paragraph (1) or (2) or article 20 (new rights etc. only to be acquired in certain lands) the Council is not required to acquire a greater interest in that land.

(4) Schedule 5 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article or article 20 of a right over land by the creation of a new right or the imposition of a restrictive covenant.

### **New rights etc. only to be acquired in certain lands**

**20.** The Council may in or over any of the land shown on the deposited plans and specified in column (2) of Schedule 6 (land in which only new rights etc. may be acquired) (being land shown

on the deposited plans and described in the book of reference) acquire compulsorily such easements or other new rights as it may require for the purpose described in column (3) of that Schedule.

#### **Power to acquire subsoil or airspace only**

**21.**—(1) The Council 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 16 (power to acquire land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

(3) Paragraph (2) does not prevent article 27 (acquisition of part of certain properties) from applying where the Council acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

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

**22.**—(1) The Council 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), the power under paragraph (1) may be exercised in relation to a street without the Council being required to acquire any part of the street or any easement or right in the street.

(3) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the Council 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.

(4) 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.

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

#### *Temporary possession of land*

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

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

(a) enter upon and take temporary possession of—

- (i) the land specified in columns (1) and (2) of Schedule 7 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the authorised works specified in column (4) of that Schedule; and
- (ii) subject to paragraph (11), any other land within the Order limits in respect of which no notice of entry has been served under section 11 of the 1965 Act and no declaration

has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981;

- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on the land; and
- (d) construct any permanent works specified in relation to that land in column (3) of Schedule 7, or any other permanent mitigation works.

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

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

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

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

(5) The Council 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 46 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5).

(8) The powers of compulsory acquisition of land conferred by this Order do not apply in relation to the land referred to in paragraph (1)(a)(i) except that the Council is not precluded from acquiring new rights over any part of that land under article 20 (new rights etc. only to be acquired in certain lands).

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

(10) Section 13 of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 17(1) (application of Part 1 of the 1965 Act).

(11) Paragraph (1)(a)(ii) does not apply to any land within a highway or any land specified in Schedule 6 (land in which only new rights etc. may be acquired).

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

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

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

(2) Paragraph (1) does not authorise the Council 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;
- (c) any land within a highway; or
- (d) any land specified in Schedule 6 (land in which only new rights etc. may be acquired).

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

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

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

(6) The Council 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 46 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

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

(10) Section 13 of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 17(1) (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.

### *Compensation*

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

**25.**—(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.

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

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

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 19 (power to acquire new rights), the tribunal must set off against the value of the rights so acquired—

- (a) any increase in the value of the land over which the new rights are required; and
- (b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity,

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

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

### *Supplementary*

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

**27.**—(1) This article applies instead of section 8(1) of the 1965 Act (as applied by article 17 (application of Part 1 of the 1965 Act)) in any case where—

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

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

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

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

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

- (a) without material detriment to the remainder of the land subject to the counter-notice; or

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

the owner must sell the land subject to the notice to treat.

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

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

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

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

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

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

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

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

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

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

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the Council must pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

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

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

whichever is the sooner.

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

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

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

(5) This article does not apply in relation to any right of way to which section 271 or 272 of the 1990 Act (extinguishment of rights of statutory undertakers etc.), paragraph 2 of Schedule 8 (provisions relating to statutory undertakers etc.) or paragraph 18(3) or 55(7) of Schedule 9 (protective provisions) applies.

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

(a) any notice given by the Council before—

- (i) the completion of the acquisition of;
- (ii) the Council's appropriation of;
- (iii) the Council's entry onto; or
- (iv) the Council's taking temporary possession of,

the land, that any or all of those paragraphs do not apply to any right of way specified in the notice; and

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

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

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

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

- (a) no notice to treat is to be served under Part 1 of the 1965 Act as applied to the acquisition of land by article 17 (application of Part 1 of the 1965 Act); and
- (b) no declaration is to be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981(19) as applied by article 18 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The powers conferred by article 23 (temporary use of land for construction of works) cease at the end of the period referred to in paragraph (1), but nothing in this paragraph prevents the Council remaining in possession of land after the end of that period, if the land was entered and possession of it was taken before the end of that period.

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(19) 1981 c. 66.

### Access to Cinnamond House

**30.**—(1) Unless otherwise agreed with the owner for the time being of the protected property, the Council must not stop up the existing access from the highway to the protected property unless it has provided a new vehicular access to the retained land from the highway and granted a right of vehicular access over it in perpetuity.

(2) In this article—

“the protected property” means the land and premises at Cinnamond House on Baldwins Lane of which part is included in plots 15 and 16 on the deposited plans; and

“the retained land” means so much of the protected property as is not acquired under the powers conferred by the Order.

## PART 4

### MISCELLANEOUS AND GENERAL

#### Defence to proceedings in respect of statutory nuisance

**31.**—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990<sup>(20)</sup> (summary proceedings by person aggrieved by statutory nuisances) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order is to be made, and no fine is to be imposed, under section 82(2) of that Act if the defendant shows—

- (a) that the nuisance relates to premises used by the Council for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to authorised works and that the nuisance is attributable to the carrying out of authorised 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 (prior consent for work on construction sites) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974<sup>(21)</sup>; or
- (b) that the nuisance is a consequence of the operation of the authorised works and that it cannot reasonably be avoided.

(2) The following provisions of the Control of Pollution Act 1974—

- (a) section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990); and
- (b) section 65(8) (corresponding provision in relation to consent for registered noise level to be exceeded),

do not apply where the consent relates to the use of premises by the Council for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works.

(3) The provisions of this article do not affect the application to the authorised works of section 122 of the Railways Act 1993<sup>(22)</sup> (statutory authority as a defence to actions in nuisance, etc.) or any rule of common law having similar effect.

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<sup>(20)</sup> 1990 c. 43.

<sup>(21)</sup> 1974 c. 40.

<sup>(22)</sup> 1993 c. 43. As amended by the Transport Act 2000 (c. 38) and the Railways Act 2005 (c. 14).

### **Planning permission**

**32.** Planning permission which is deemed by a direction under section 90(2A) 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) of that Act (cases in which land is to be treated as operational land for the purposes of that Act).

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

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

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

(2) In exercising the powers conferred by paragraph (1), the Council 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 transfer undertaking**

**34.—**(1) The Council may transfer to either LUL or Network Rail ("the transferee")—

- (a) the authorised works, or any part of them; or
- (b) its right to construct, maintain, use or operate the authorised works (or any part of them) or to acquire or use land for the purpose of the authorised works and such related statutory rights as may be agreed between the Council and the transferee,

on such terms as may be agreed between the Council and the transferee.

(2) Where an agreement has been made by virtue of paragraph (1)(b) references in this Order to the Council include references to the transferee.

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

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

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

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

### **Transfer of former Croxley Green Branch line**

**36.—**(1) The Council and Network Rail and LUL may, subject in the case of Network Rail to compliance with the terms of its network licence, any relevant operational procedures and obligations under statute, carry into effect agreements entered into for the transfer to the Council or LUL or in part to the Council and in part to LUL of—

- (a) all or part of the former Croxley Green Branch line; and
- (b) rights and obligations (whether or not statutory) of Network Rail relating to the former Croxley Green Branch line,

and for the transfer back to Network Rail in such circumstances as may be specified in the agreement, of all or part of the former Croxley Green Branch line and any such rights and obligations.

(2) The Council and LUL may carry into effect agreements entered into for the transfer to LUL of any lands works or property and any rights and obligations transferred to the Council in accordance with paragraph (1).

(3) The Council or LUL may use so much of the former Croxley Green Branch line as is within the Order limits in connection with the construction, maintenance and operation of the authorised works, and the 1907 Act, so far as not repealed by paragraph (4), has effect subject to the provisions of this Order.

(4) Subject to paragraphs (5) and (6), on the date of the transfer to the Council or LUL of all or part of the former Croxley Green Branch line under the powers conferred by this Order so much of the 1907 Act is repealed as relates to that part of the former Croxley Green Branch line which lies outside the limits of deviation for Work No. 1.

(5) Nothing in paragraphs (3) and (4) affects any provision in the 1907 Act which expressly provides for—

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

(6) The repeal of the provisions of the 1907 Act mentioned in paragraph (4) do not affect the continued operation and effect of any deed, or of any other agreement or instrument (whether or not executed under seal), relating to any land, works or property referred to or affected by those provisions and in existence before the repeal takes effect.

(7) In this article—

“the former Croxley Green Branch line” means the land belonging to Network Rail within the land shown numbered 41, 41a, 42, 44, 44a, 44b, 53, 54, 59, 64, 66, 69, 78, 79, 80, 86, 87, 89, 93 and 94 and the land hatched black on the deposited plans including any works, apparatus and equipment belonging to Network Rail within that land and any easement of other property interest or right held or used by Network Rail in connection with such land, works, apparatus or equipment; and

“the 1907 Act” means the London and North Western Railway Act 1907(23).

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

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

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

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

### **Trespass**

**38.—(1)** A person who—

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

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

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

(3) If the railway or any part of it is transferred to Network Rail or LUL under article 34 (power to transfer undertaking) this article ceases to apply to the railway or to the part of it that has been so transferred.

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

### **Disclosure of confidential information**

39. A person who—

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

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.

### **Water abstraction**

40.—(1) The restriction imposed by section 24(1) of the Water Resources Act 1991<sup>(24)</sup> (restriction on abstraction of water) does not apply in relation to the abstraction of water for the purposes of, or in connection with, the construction of the authorised works.

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

(3) Where—

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

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

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

(5) Section 48A(5) of the Water Resources Act 1991 (prohibition of claims in respect of loss or damage caused by abstraction of water which are not claims under that section) has no application to claims under this article or under Part 6 of Schedule 9 (protection for the Environment Agency).

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

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(24) 1991 c. 57.

### **Statutory undertakers etc.**

41. The provisions of Schedule 8 (provisions relating to statutory undertakers etc.) have effect.

### **Protection of interests**

42. The provisions of Schedule 9 (protective provisions) have effect.

### **Disposal of land to LUL**

43. Section 123(2) of the Local Government Act 1972<sup>(25)</sup> (which requires the consent of the Secretary of State for certain disposals of land by a principal council) does not apply to the disposal of land to LUL authorised by this Order.

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

44. The Council 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, deposited sections and 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**

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

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

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

(3) For the purposes of section 7 of the Interpretation Act 1978<sup>(26)</sup> as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

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

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

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

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is taken to be fulfilled where the

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<sup>(25)</sup> 1972 c. 70.

<sup>(26)</sup> 1978 c. 30.

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.

#### **No double recovery**

**46.** 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**

**47.** 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

*Martin Woods*  
Head of the Transport and Works Act Orders  
Unit  
Department for Transport

31st July 2013

## SCHEDULES

### SCHEDULE 1

Article 5

#### SCHEDULED WORKS

##### **In the County of Hertfordshire, Districts of Three Rivers and Watford**

*Work No. 1* — A railway 2,993 metres in length, commencing by a junction with the London Underground Metropolitan Line railway at a point 128 metres north-east of the bridge carrying Winton Approach over that railway, passing north-eastwards then south-eastwards on viaduct over Baldwins Lane, Rickmansworth Road, the Grand Union Canal, Beggars Bush Lane, the river Gade, then passing south-eastwards over New Ascot Road and Ascot Road, along the course of the Croxley Green Branch Line railway and terminating by a junction with the Euston to Watford Junction Line railway at a point 15 metres south-west of the bridge carrying Wiggenhall Road over the railway.

Work No. 1 includes the viaduct, new stations at Ascot Road and Watford Hospital, a new bridge carrying the railway over New Ascot Road and reconstruction of the bridge over Ascot Road, widening of the bridge carrying the railway over the former Cardiff Road and parapet strengthening works to the bridges carrying Tolpits Lane, Vicarage Road and Wiggenhall Road over the railway.

##### **In the County of Hertfordshire, District of Watford**

*Work No. 1A* — Reconstruction and extension of the culvert between Beggars Bush Lane and Ascot Road.

*Work No. 2* — A railway 120 metres in length, comprising the reinstatement of the junction of the Croxley Green Branch Line railway with the Euston to Watford Junction Line railway, commencing by a junction with Work No. 1 and terminating at a point 120 metres north-east of the bridge carrying Wiggenhall Road over the railway.

### SCHEDULE 2

Articles 5 and 16

#### ACQUISITION OF CERTAIN LANDS FOR ANCILLARY WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on the land plan</i>	<i>(3)</i> <i>Purpose for which land may be acquired or used</i>
Districts of Three Rivers and Watford	12, 13, 18, 20, 45, 46, 48, 49, 52 and 62	Working site and diversion of utility apparatus

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on the land plan</i>	<i>(3)</i> <i>Purpose for which land may be acquired or used</i>
District of Watford	61 and 61a	Working site and afterwards station car park
	68	Substation, working site and access
	76	Hard landscaping and provision of cycle storage facilities
	87a	Flood compensation
	90 and 91	Drainage works
	93	The provision and renewal of rail systems for operational purposes
	99, 100, 102, 103, 104, 105, 106, 107, 110, 112, 114, 116, 118, 120, 120a, 121, 122, 122a, 127, 128, 129 and 130	The provision and renewal of rail systems and facilities for operational purposes including the installation of a fourth rail power supply, platform extensions at Watford High Street and Watford Junction stations, reconfiguration of permanent way at Watford Junction station and the provision of signalling and traction power equipment

**Status:** This is the original version (as it was originally made). UK  
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## SCHEDULE 3

Article 8

## STREET TO BE STOPPED UP

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Street to be stopped up</i>	<i>Extent of stopping up</i>
District of Three Rivers	Watford Road (central reservation)	At point P1

## SCHEDULE 4

Article 9

## STREETS TO BE TEMPORARILY STOPPED UP

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Street to be temporarily stopped up</i>	<i>Extent of temporary stopping up</i>
District of Three Rivers	Baldwins Lane	Between points T1 and T2
Districts of Three Rivers and Watford	Watford Road (including cycle track)	Between points T3 and T4
District of Watford	New Ascot Road	Between points T5 and T6
	Ascot Road (including cycle track)	Between points T7 and T8
	Surfaced path along former Cardiff Road (not on definitive map)	Between points T9 and T10
	Footpath (FP50)	Between points T11 and T12

## SCHEDULE 5

Article 19

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 and in the case of

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

2.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973<sup>(27)</sup> has effect subject to the modifications set out in sub-paragraphs (2) and (3).

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

- (a) for the words “land is acquired or taken” there are substituted the words “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for the words “acquired or taken from him” there are substituted the words “over which the right is exercisable or the restrictive covenant enforceable”.

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

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

#### *Application of the 1965 Act*

3.—(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

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

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

4. For section 7 of the 1965 Act (measure of compensation in case of severance) there is substituted the following section—

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

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(27) 1973 c. 26.

5. For section 8 of the 1965 Act (other provisions as to divided land) there is substituted the following section—

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

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

the Croxley Rail Link Order 2013(28) (“the Order”), in relation to that person, ceases to authorise the purchase of the right or the imposition of a restrictive covenant and is deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section is to be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection affects any other power of the authority to withdraw the notice.”

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

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

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

7. Section 11 of the 1965 Act (powers of entry) is modified so as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right or restrictive covenant, it has power, exercisable in the equivalent circumstances and subject to the equivalent

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(28) S.I. 2013 /1967.

conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

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

9. Section 22 of the 1965 Act (interests omitted from purchase) 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 or to enforce the restrictive covenant imposed, subject to compliance with that section as respects compensation.

## SCHEDULE 6

Article 20

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

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on the deposited plans</i>	<i>(3)</i> <i>Purpose for which land may be acquired</i>
District of Three Rivers	34	Access for construction and afterwards for maintenance of the authorised works
	36	Access for construction and afterwards for maintenance of the authorised works
District of Watford	63	Emergency access to and from proposed station
	70	Emergency access to and from proposed station
	71	Emergency access to and from proposed station
	73b	Access for construction and afterwards for maintenance of the authorised works

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on the deposited plans</i>	<i>(3)</i> <i>Purpose for which land may be acquired</i>
	81	Access for construction and afterwards for maintenance of the authorised works
	81a	Access for construction and afterwards for maintenance of the authorised works
	82	Access for construction and afterwards for maintenance of the authorised works
	87b	Access for maintenance of the authorised works

## SCHEDULE 7

Article 23

## LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on the deposited plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Authorised works</i>
District of Three Rivers	8	Working site and access during construction of the authorised works	Work No.1
	16	Working site and access during construction of the authorised works	Work No.1
	21	Working site and access during construction of the authorised works and	Work No.1

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on the deposited plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Authorised works</i>
		afterwards reconfiguration of playground facilities	
	21a	Working site and access during construction of the authorised works and afterwards reconfiguration of playground facilities	Work No.1
	21b	Working site and access during construction of the authorised works	Work No.1
	22a	Working site and access during construction of the authorised works	Work No.1
	23	Working site and access during construction of the authorised works and afterwards reconfiguration of playground facilities	Work No.1
	25	Working site and access during construction of the authorised works	Work No.1
	27	Working site and access during construction of the authorised works	Work No.1

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on the deposited plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Authorised works</i>
	28	Working site and access during construction of the authorised works	Work No.1
	30	Working site and access during construction of the authorised works	Work No.1
	31	Working site and access during construction of the authorised works	Work No.1
	33	Working site and access during construction of the authorised works	Work No.1
Districts of Three Rivers and Watford	37	Working site and access during construction of the authorised works	Work No.1
	39	Working site and access during construction of the authorised works	Work No.1
District of Watford	40b	Working site and access during construction of the authorised works	Works Nos.1 and 1A
	41	Working site and access during construction of the authorised works	Works Nos.1 and 1A

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on the deposited plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Authorised works</i>
	43	Working site and access during construction of the authorised works	Works Nos.1 and 1A
	44a	Working site and access during construction of the authorised works	Works Nos.1 and 1A
	44b	Working site and access during construction of the authorised works	Works Nos.1 and 1A
	44d	Working site and access during construction of the authorised works	Work No.1
	50	Working site and access during construction of the authorised works	Work No.1
	51	Working site and access during construction of the authorised works	Work No.1
	73c	Working site and access during construction of the authorised works	Work No.1
	77	Working site and access during	Work No.1

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on the deposited plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Authorised works</i>
		construction of the authorised works	
	81	Working site and access during construction of the authorised works	Work No.1
	83a	Working site and access during construction of the authorised works	Work No.1
	84a	Working site and access during construction of the authorised works	Work No.1
	85a	Working site and access during construction of the authorised works	Work No.1
	85b	Working site and access during construction of the authorised works	Work No.1
	92	Working site and access during construction of the authorised works	Work No.1
	92a	Working site and access during construction of the authorised works	Work No.1

SCHEDULE 8

Articles 8, 28 and 41

PROVISIONS RELATING TO STATUTORY UNDERTAKERS ETC.

*Apparatus of statutory undertakers etc. on land acquired*

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

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

(3) Where any apparatus of public utility undertakers or of a public communications provider is removed in pursuance of a notice or order given or made under section 271, 272 or 273 of the 1990 Act, as applied by sub-paragraph (1), any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the Council compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

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

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

is entitled to recover from the Council 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 Communications Act 2003(29); and

“public utility undertakers” has the same meaning as in the Highways Act 1980(30).

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

2.—(1) Where a street is stopped up under article 8 (stopping up of street) any statutory utility whose apparatus is under, in, upon, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this paragraph, as if this Order had not been made.

(2) Where a street is stopped up under article 8 any statutory utility whose apparatus is under, in, upon, over, along or across the street may, and if reasonably requested to do so by the Council must—

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(29) 2003 c. 21.

(30) 1980 c. 66.

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or
  - (b) provide other apparatus in substitution for the existing apparatus and place it in that other position.
- (3) Subject to the following provisions of this paragraph, the Council must pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—
- (a) the execution of the relocation works required in consequence of the stopping up of the street; and
  - (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.
- (4) If in the course of the execution of relocation works under sub-paragraph (2)—
- (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or
  - (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,
- and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the Council, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this paragraph would be payable to the statutory utility by virtue of sub-paragraph (3) is to be reduced by the amount of that excess.
- (5) For the purposes of sub-paragraph (4)—
- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
  - (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.
- (6) An amount which apart from this sub-paragraph would be payable to a statutory utility in respect of works by virtue of sub-paragraph (3) (and having regard, where relevant, to sub-paragraph (4)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.
- (7) Sub-paragraphs (3) to (6) do not apply where the authorised works constitute major transport works for the purposes of Part 3 of the 1991 Act, but instead—
- (a) the allowable costs of the relocation works are to be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and
  - (b) the allowable costs are to be borne by the Council and the statutory utility in such proportions as may be prescribed by any such regulations.
- (8) In this paragraph—
- “apparatus” has the same meaning as in Part 3 of the 1991 Act;
  - “relocation works” means work executed, or apparatus provided, under sub-paragraph (2); and

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

## SCHEDULE 9

Article 42

### PROTECTIVE PROVISIONS

#### PART 1

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

1.—(1) The following provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the Council and the undertaker concerned.

(2) The provisions of paragraph 1 of Schedule 8 (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 Schedule applies.

2. In this Part of this Schedule—

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

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989<sup>(31)</sup>) belonging to or maintained by that undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water undertaker, any mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
  - (i) any drain or works vested in the undertaker under the Water Industry Act 1991<sup>(32)</sup>; and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

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

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

“functions” includes powers and duties;

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

“undertaker” means—

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<sup>(31)</sup> 1989 c. 29.

<sup>(32)</sup> 1991 c. 56.

- (e) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
  - (f) a gas transporter within the meaning of Part 1 of the Gas Act 1986<sup>(33)</sup>;
  - (g) a water undertaker within the meaning of the Water Industry Act 1991; and
  - (h) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,
- for the area of the authorised works, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

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

4. Regardless of any provision in this Order or anything shown on the deposited plans the Council must not acquire any apparatus other than by agreement.

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

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

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

(4) Any alternative apparatus to be constructed in land of the Council under this Part of this Schedule is to be constructed in such manner and in such line or situation as may be agreed between the undertaker in question and the Council or in default of agreement settled by arbitration in accordance with article 47 (arbitration).

(5) The undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 47, and after the grant to the undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the Council to be removed under the provisions of this Part of this Schedule.

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

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(33) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by section 76 of the Utilities Act 2000 (c. 27).

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

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

6.—(1) Where, in accordance with the provisions of this Part of this Schedule, the Council affords to an undertaker facilities and rights for the construction and maintenance in land of the Council of alternative apparatus in substitution for apparatus to be removed, those facilities and rights may be granted upon such terms and conditions as may be agreed between the Council and the undertaker in question or in default of agreement settled by arbitration in accordance with article 47 (arbitration).

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

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

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

7.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 5(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the Council under paragraph 5(2), the Council 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 the undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

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

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

(6) The Council 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.

**8.—**(1) Subject to the following provisions of this paragraph, the Council 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 which may be required in consequence of the execution of any such works as are referred to in paragraph 5(2).

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

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

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

and the placing of apparatus of that type or capacity or those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the Council or, in default of agreement, is not determined by arbitration in accordance with article 47 (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 placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

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

**9.—**(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 5(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of an undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any undertaker, the Council must—

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

by reason or in consequence of any such damage or interruption.

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

(3) An undertaker must give the Council reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the Council, 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.

**10.** Nothing in 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 on land belonging to Network Rail on the date on which this Order is made of which the benefit and burden is transferred to the Council under article 36 (transfer of former Croxley Green Branch line).

## PART 2

### PROTECTION FOR OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

**11.**—(1) The following provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the Council and the operator.

(2) In this Part of this Schedule—

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

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

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the Communications Act 2003<sup>(34)</sup>;

“electronic communications code network” means—

(a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the Communications Act 2003; and

(b) an electronic communications network which the Secretary of State is providing or proposing to provide;

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

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

**12.**—(1) Subject to sub-paragraphs (2) to (4), if as the result of the construction of the authorised works, 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,

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<sup>(34)</sup> 2003 c. 21. See section 106.

(c) the Council must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and must—

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

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

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

(4) Any difference arising between the Council and the operator under this paragraph is to be referred to and settled by arbitration under article 47 (arbitration).

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

- (a) any apparatus in respect of which the relations between the Council 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.

**14.** Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the Council and an operator in respect of any apparatus laid or erected in land belonging to the Council on the date on which this Order is made of which the benefit and burden is transferred to the Council under article 36 (transfer of former Croxley Green Branch line).

## PART 3

### PROTECTION FOR NETWORK RAIL

**15.** The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the Council and Network Rail and, in the case of paragraph 29, any other person on whom rights or obligations are conferred by that paragraph.

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

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as amended from time to time, granted to Network Rail by the Secretary of State in exercise of powers under section 8 of the Railways Act 1993<sup>(35)</sup>;

“Network Rail” includes any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006)<sup>(36)</sup> the holding company of Network Rail Infrastructure Limited, a subsidiary of

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<sup>(35)</sup> 1993 c. 43.

<sup>(36)</sup> 2006 c. 46.

Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

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

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used for the benefit of Network Rail for the purposes of such railway or works, apparatus or equipment; and

“specified work” means so much of any of the authorised works as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

**17.—**(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval must not be unreasonably withheld or delayed but may be subject to reasonable conditions and is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the Council with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements arising from those procedures; and
- (b) use its reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised works under this Order.

**18.—**(1) The Council must not exercise the powers conferred by article 14 (power to survey and investigate land) or the powers conferred by section 11(3) of the 1965 Act or the Compulsory Purchase (Vesting Declarations) Act 1981(37) as applied by this Order in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The Council must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The Council must not exercise the powers conferred by section 271 or 272 of the 1990 Act, as applied by Schedule 8 (provisions relating to statutory undertakers etc.), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The Council must not under the powers conferred by this Order acquire or use or acquire new rights over, or seek to impose any restrictions on the use of, any railway property except with the consent of Network Rail.

**19.—**(1) The Council must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer

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(37) 1981 c. 66.

and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 47 (arbitration).

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld or delayed, and if by the period of 56 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated disapproval of those plans and the grounds of disapproval the engineer is to be deemed to have approved the plans as submitted.

(3) If by the end of the period of 56 days beginning with the date on which such plans have been supplied to Network Rail, Network Rail gives notice to the Council that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property, then if the Council desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the Council in accordance with the plans approved or deemed to be approved or settled under this paragraph.

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes are to be constructed by Network Rail but at the expense of the Council, or if Network Rail so desires such protective works must be carried out by the Council at its own expense without unnecessary delay and the Council must not commence the construction of the specified works until the engineer has notified the Council that the protective works have been completed to the engineer's reasonable satisfaction.

**20.**—(1) Any specified work and any protective works to be constructed by virtue of paragraph 19(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 19;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic on it or the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of, a specified work, the Council must, regardless of any approval described in paragraph 20(1)(a), make good such damage and pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes—

- (a) any liability on the Council with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents; or
- (b) any liability on Network Rail with respect to any damage, costs, expenses or loss attributable to the negligence of the Council or its servants, contractors or agents.

**21.** The Council must—

- (a) at all times afford 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.

**22.** Network Rail must at all times afford reasonable facilities to the Council and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the Council with such information as it may reasonably require with regard to such works or the method of constructing them.

**23.—(1)** If any permanent or temporary alterations or additions to railway property, or to any protective works under paragraph 19(4), are reasonably necessary during the construction of a specified work, or during a period of 12 months after the opening for public use of any authorised work that includes a specified work, in consequence of that specified work, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the Council reasonable notice of its intention to carry out such alterations and additions, the Council must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the Council, Network Rail gives notice to the Council that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the Council desires that part of the specified work to be constructed, Network Rail must assume construction of that part of the specified work and the Council must, regardless of any such approval of a specified work under paragraph 19(1), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the Council to Network Rail under this paragraph.

**24.** The Council must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the Council as provided by paragraph 19(3) or in constructing any protective works under the provisions of paragraph 19(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the Council and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors and other persons whom it is reasonably necessary to appoint for inspecting, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work; and
- (d) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or consequence of the construction or failure of a specified work.

**25.—(1)** In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail’s apparatus generated by the operation of the authorised works where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised works) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 19(1) for the relevant part of the authorised works giving rise to EMI (unless the Council has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the Council must in the design and construction of the authorised works take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the Council’s compliance with sub-paragraph (3)—

- (a) the Council must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 19(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the Council all information in the possession of Network Rail reasonably requested by the Council in respect of Network Rail’s apparatus identified under sub-paragraph (a); and
- (c) Network Rail must allow the Council reasonable facilities for the inspection of Network Rail’s apparatus identified under sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail’s apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 19(1) has effect subject to this sub-paragraph.

(6) If at any time prior to the authorised works being open for public use regardless of any measures adopted under sub-paragraph (3), the testing or commissioning of the authorised works causes EMI then the Council must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) cease to use (or procure the cessation of use of) the Council’s apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail’s apparatus.

(7) In the event of EMI having occurred—

- (a) the Council must afford reasonable facilities to Network Rail for access to the Council’s apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the Council for access to Network Rail’s apparatus in the investigation of such EMI; and
- (c) Network Rail must make available to the Council any additional material information in its possession reasonably requested by the Council in respect of Network Rail’s apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus under sub-paragraph (5) or (6)—

- (a) Network Rail must allow the Council reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and
- (b) any modifications to Network Rail's apparatus approved under those sub-paragraphs must be carried out and completed by the Council in accordance with paragraph 20.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 29(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 24(a) any modifications to Network Rail's apparatus under this paragraph are to be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 47 (arbitration) to the Institution of Civil Engineers is to be read as a reference to the Institution of Electrical Engineers.

**26.** The Council must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway belonging to Network Rail.

**27.** If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the Council informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the Council 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 not adversely to affect railway property.

**28.** Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the date when this Order was made by reason of the existence of a specified work, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the Council, are to be repaid by the Council to Network Rail.

**29.—(1)** The Council must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (but subject to article 46 (no double recovery) which may be occasioned to or reasonably incurred by Network Rail—

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

and the Council must indemnify Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission; and the fact that any act or thing may have been done by Network Rail on behalf of the Council or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision will not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the Council from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the Council reasonable notice of any such claim or demand and must make no settlement or compromise of such a claim or demand without the prior consent of the Council.

(3) The sums payable by the Council under sub-paragraph (1) may include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any such sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

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

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail’s railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

**30.** Network Rail must, on receipt of a request from the Council, from time to time provide the Council free of charge with written estimates of the costs, charges, expenses and other liabilities for which the Council is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 29) and with such information as may reasonably enable the Council to assess the reasonableness of any such estimate or claim made or to be made under this Part of this Schedule (including any claim relating to those relevant costs).

**31.** In the assessment of any sums payable to Network Rail 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 Network Rail 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 the Council under this Part of this Schedule or increasing the sums so payable.

**32.** The Council 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 44 (certification of plans etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

## PART 4

### PROTECTION FOR LUL

**33.** The following provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the Council and LUL.

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

“construction” includes execution, demolition, placing, altering and reconstruction and “construct” and “constructed” is to be construed accordingly;

“EMI” means electromagnetic interference with LUL’s works and apparatus generated by the operation of the authorised works (including the operation of trains using the Croxley Rail Link) where such interference is of a level which affects the safe and efficient operation of LUL’s works and apparatus;

“the engineer” means an engineer appointed by LUL for the purposes of this Order;

“LUL’s works and apparatus” includes any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised works) which are owned or used by LUL for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications;

“plans” includes sections, drawings, particulars and schedules of construction (including particulars as to the working methods and phases of the specified works) and “approved plans” means plans approved or settled by arbitration under article 47 (arbitration) and in accordance with the provisions of this Part of this Schedule;

“railway property” means any railway owned or operated by LUL, and any works, apparatus and equipment connected with such railway and includes any lands, premises, structures or erections held or used by LUL for the purposes of such railway or works, apparatus and equipment; and

“the specified works” means so much of the authorised works as may be situated upon, across, under, over or within 15 metres of railway property (including its operation and use), or may in any way affect railway property and includes the construction and maintenance of the authorised works.

**35.** The provisions of Schedule 8 (provisions relating to statutory undertakers etc.) do not apply to works, apparatus and equipment to which this Part of this Schedule applies.

**36.—(1)** The Council must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of LUL.

(2) The consent of LUL under sub-paragraph (1) must not be unreasonably withheld but may be given subject to reasonable conditions.

**37.—(1)** The Council must not under the powers of this Order, without the consent of LUL, which is not to be unreasonably withheld, acquire or enter upon, take or use, whether temporarily or permanently or acquire any new rights over any railway property.

(2) Sub-paragraph (1) is not to prevent the Council from acquiring the interest of any person other than LUL in the said land unless existing provisions governing the transfer of such interest prevent such interest being transferred.

**38.** The Council must, before commencing the construction of any part of the specified works, supply to LUL such proper and sufficient plans relevant to the part of the specified works concerned (including particulars as to the working methods and the regulation of traffic in the vicinity of those specified works) as may be reasonably required by the engineer and must not commence those specified works until the plans have been approved in writing by the engineer or settled by arbitration under article 47 (arbitration).

**39.** The engineer’s approval under paragraph 38 must not be unreasonably withheld and any question of whether it has been unreasonably withheld is to be settled by arbitration under article 47 (arbitration) and the engineer’s approval or disapproval of the plans must be notified within 56 days of their submission.

**40.** If within 56 days after the plans have been supplied to LUL, LUL gives notice to the Council that LUL desires to construct any part of the specified works, which in the opinion of the engineer will or may affect the stability of railway property or the safe and effective operation of LUL’s railway undertaking, then, if the Council desires such part of the specified works to be constructed, LUL must construct it without unnecessary delay on behalf of, and to the reasonable satisfaction of, the Council in accordance with the plans approved or settled in accordance with this Part of this Schedule or amended as agreed with the Council.

**41.** Upon signifying approval or disapproval of the plans the engineer may specify any protective works, whether temporary or permanent, which in the engineer's opinion should be carried out before the commencement of the construction of the specified works to ensure the stability of railway property, the continuation of the safe and efficient operation of LUL's railway undertaking and the comfort and safety of the passengers who may be affected by the specified works and such protective works as may be reasonably necessary for those purposes must be constructed by LUL at the expense of the Council without unnecessary delay, or if LUL so desires, such protective works must be carried out by the Council at its own expense without unnecessary delay to the satisfaction of the engineer and the Council must not commence the construction of the specified works until the engineer has notified the Council that the protective works have been completed to the engineer's reasonable satisfaction.

**42.** The Council must give to the engineer not less than 56 days' notice of its intention to commence the construction of any of the specified works or protective works and also except in emergency (when it must give such notice as may be reasonably practicable), of its intention to carry out any works for the maintenance of the specified works in so far as such works of repair or maintenance affect or interfere with railway property.

**43.** The construction of the specified works, any protective works and any alterations and additions to them carried out by the Council must be carried out in such a way so as not to prejudice the safety of LUL's railway and without limitation to this obligation those works, when commenced, must be carried out—

- (a) without unnecessary delay in accordance with the plans approved or settled in accordance with this Part of this Schedule;
- (b) under the supervision (if required by the engineer), and to the reasonable satisfaction of the engineer;
- (c) in such manner as to mitigate against any damage to the railway property; and
- (d) so far as reasonably practicable, so as not to interfere with or obstruct the free uninterrupted and safe use of LUL's railway, the conduct of traffic on the railways of LUL and the use by passengers of railway property,

and if any damage to railway property or any such interference or obstruction is caused by the carrying out of the specified works or any protective works carried out, the Council must, notwithstanding any approval in accordance with this Part of this Schedule, make good such damage and must pay to LUL all reasonable expenses to which LUL may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

**44.** Nothing in paragraph 43 imposes any liability on the Council with respect to any damage, cost, expense or loss which is attributable to the negligence of LUL or any person in its employ, or of its contractors or agents and any liability of the Council under paragraph 43 is to be reduced proportionately to the extent to which any damage, cost, expense or loss is attributable to the negligence of LUL or of any person in its employ, or of its contractors or agents.

**45.** The Council must at all times afford reasonable facilities to the engineer for access to the specified works during their construction and the construction of any protective works carried out by the Council under the provisions of paragraph 41 and must supply the engineer with all such information as the engineer may reasonably require with regard to the specified works or any such protective works or to the method of construction of them.

**46.** During the construction of any works by LUL under this Part of this Schedule, LUL must at all times afford reasonable facilities to the Council and its agents for access to those works, the Council complying at all times with LUL's requirements for training and safety, and must supply the Council with such information as it may reasonably require with regard to such works or the method of constructing them.

**47.** If any alterations or additions, either permanent or temporary, to railway property are reasonably necessary during the construction of the specified works, or during a period of 12 months after the completion of the specified works, in consequence of the construction of the specified works, such alterations and additions may be carried out by LUL and if LUL gives to the Council reasonable notice of its intention to carry out such alterations and additions, the Council must pay to LUL the reasonable cost of such alterations and additions including, in respect of any permanent alterations and additions, a capitalised sum representing any increase in the costs which may be expected to be reasonably incurred by LUL in maintaining, working and, when necessary, renewing any such alterations or additions.

**48.** The Council must in the design and construction of the authorised works take all measures necessary to prevent EMI and must establish with LUL (both parties acting reasonably) appropriate arrangements to test and verify the effectiveness of works proposed to be constructed by the Council to prevent EMI.

**49.** If the cost of maintaining, working or renewing its railway property is reduced in consequence of any such alterations or additions referred to in paragraph 47, a capitalised sum representing such saving is to be set off against any sum payable by the Council to LUL under this Part of this Schedule.

**50.** The Council must repay to LUL all reasonable costs, charges and expenses reasonably incurred by LUL—

- (a) in constructing any part of a specified work on behalf of the Council as provided by paragraph 40 or in constructing any protective works under the provisions of paragraph 41, including, in respect of any permanent protective works, a capitalised sum representing the cost which may be expected to be reasonably incurred by LUL in maintaining and renewing such works;
- (b) in respect of the employment or procurement of the services of any inspectors, supervisory staff, signallers, watchkeepers and other persons appointed for inspecting, monitoring, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works and to ensure the continued safe and efficient operation of LUL's railway undertaking (including any relocation of works, apparatus and equipment necessitated by the specified works) and the comfort and safety of passengers;
- (c) in respect of any special traffic working resulting from any speed restrictions which may, in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of the specified works or from the substitution or diversion of railway services of LUL which may be reasonably necessary for the same reason;
- (d) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or consequence of the construction or failure of the specified works; and
- (e) in respect of the approval of plans and any supervision by the engineer of the construction of the specified works.

**51.** The Council must be responsible for, and make good to LUL all reasonable costs, charges, damages and expenses not otherwise provided for in paragraph 50 which may be occasioned to or reasonably incurred by LUL—

- (a) by reason of the specified works or the failure of the specified works; and
- (b) by reason of any act or omission of the Council or of any person in its employ or of its contractors or others whilst engaged upon the construction of the specified works;

and the Council must indemnify LUL from and against all claims and demands arising out of or in connection with the construction of the specified works or any failure, act or omissions as referred to in this Part of this Schedule; and the fact that any act or thing may have been done in accordance

with any requirement of the engineer or under the engineer's supervision must not (if it was not attributable to the act, neglect or default of LUL or of any person in its employ, or of its contractors or agents) excuse the Council from any liability under the provisions of this Part of this Schedule.

**52.**—(1) Any liability of the Council under paragraph 51 is to be reduced proportionately to the extent to which any costs, charges, damages and expenses are attributable to the act, neglect or default of LUL or of any person in LUL's employ, or of LUL's contractors or agents.

(2) LUL must give to the Council immediate notice of any claim or demand and no settlement or compromise of any claim or demand is to be made without the prior consent of the Council (such consent not to be unreasonably withheld).

**53.** Any difference arising between the Council and LUL under this Part of this Schedule must be referred to and settled by arbitration under article 47 (arbitration).

## PART 5

### PROTECTION FOR THE CANAL & RIVER TRUST

#### *Interpretation*

**54.**—(1) The following provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the Council and the Trust.

(2) In this Part of this Schedule—

“the Trust's network” means the Trust's network of waterways;

“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 as may be carried out during the period of 24 months from the completion of that work;

and “construct” and “constructed” have corresponding meanings;

“detriment” means any damage to the waterway or any other property of the Trust and, without limitation on the scope of that meaning, includes—

- (c) any obstruction of, or interference with, or hindrance or danger to, navigation or to any use of the waterway (including towing paths);
- (d) the erosion of the bed or banks of the waterway, or the impairment of the stability of any works, lands or premises forming part of the waterway;
- (e) the deposit of materials or the siltation of the waterway so as to damage the waterway;
- (f) the pollution of the waterway;
- (g) any significant alteration in the water level of the waterway, or significant interference with the supply of water to it, or drainage of water from it;
- (h) any harm to the ecology of the waterway (including any adverse impact on any site of special scientific interest comprised in the Trust's network);
- (i) any interference with the exercise by any person of rights over the Trust's network;

“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 59(3)(a);

“specified work” means so much of any of the authorised works as is situated upon, across, under, over or within 15 metres of the waterway, or may in any way affect the waterway;

“towing path” means the towing path forming part of the waterway;

“the Trust” means the Canal & River Trust;

“the waterway” means the Grand Union Canal, 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 that canal.

#### *Powers requiring the Trust’s consent*

**55.**—(1) The Council must not under the powers conferred by this Order acquire compulsorily any land of the Trust or any easement or other right over such land, or use any such land, unless such acquisition or use is with the consent of the Trust.

(2) The Council must not in the exercise of the powers conferred by this Order obstruct or interfere with pedestrian or vehicular access to the waterway unless such obstruction or interference with such access is with the consent of the Trust.

(3) The Council must not exercise the powers conferred by article 9(1) (temporary stopping up of streets) in relation to any way over land comprised in the waterway unless such exercise is with the consent of the Trust.

(4) Nothing in article 15 (temporary interference with waterways) authorises the Council—

- (a) to discharge any water directly or indirectly into the waterway; or
- (b) to carry out any works to, or make any opening in, or otherwise interfere with, the waterway (including its banks and bed),

except with the consent of the Trust and on terms that the Trust may reasonably require, and in accordance with plans approved by, and under the supervision (if given) of, the engineer.

(5) The Council must not exercise any power conferred by this Order in such a way as to interfere with the supply of water to or the drainage of water from the waterway unless such exercise is with the consent of the Trust.

(6) The Council must not exercise the powers conferred by article 14 (power to survey and investigate land) and the powers conferred by article 15, or section 11(3) of the 1965 Act (power of entry for surveying land), in relation to the waterway unless such exercise is with the consent of the Trust.

(7) The Council must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, as applied by Schedule 8 (provisions relating to statutory undertakers etc.), so as to divert any right of access to the waterway, but such right of access may be diverted with the consent of the Trust.

(8) The consent of the Trust under sub-paragraphs (1) to (7) and the approval of plans under sub-paragraph (4) must not be unreasonably withheld or delayed but may be given subject to reasonable terms and conditions which in the case of article 13 (discharge of water) may include conditions—

- (a) specifying the maximum volume of water which may be discharged in any period; and
- (b) authorising the Trust on giving reasonable notice (except in an emergency, when the Trust may require immediate suspension) to the Council to require the Council to suspend the discharge of water or reduce the flow of water where this is necessary by reason of any operational or environmental requirement of the Trust.

*Vehicles, plant and machinery*

**56.** The Council must not use any land or property of the Trust forming part of the waterway for the passage or siting of vehicles, plant or machinery employed in the construction of the specified works 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 59.

*Fencing*

**57.** Where required by the engineer the Council must to the reasonable satisfaction of the engineer fence off a specified work or a protective work or take such other steps as the engineer may require to be taken for the purpose of separating a specified work or a protective work from the waterway, whether on a temporary or permanent basis.

*Survey of waterway*

**58.**—(1) Before the commencement of the initial construction of any part of the specified works and again following practical completion of the specified works the Council must bear the reasonable cost of the carrying out by a qualified engineer (“the surveyor”), to be approved by the Trust and the Council, of a survey (including a dip-survey to measure the depth of the waterway) (“the survey”) of so much of the waterway and of any land and existing works of the Council which may provide support for the waterway as will or may be affected by the specified works.

(2) For the purposes of the survey the Council must—

- (a) on being given reasonable notice (save in case of emergency, when immediate access must be afforded) afford reasonable facilities to the surveyor for access to the site of the specified works and to any land and existing works of the Council which may provide support for the waterway 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 the Council 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 waterway (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 these were specified works.

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

*Approval of plans, protective works etc.*

**59.**—(1) The Council 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 have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld or delayed, and if within 56 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 the Council or by the Trust at the Council's request with all reasonable dispatch and the Council must not commence the construction of a specified work until the engineer has notified the Council that the protective works have been completed to the engineer's reasonable satisfaction.

(4) The Council must pay to the Trust a capitalised sum representing the reasonably increased or additional cost of maintaining and, when necessary, renewing any works, including any permanent protective works provided under sub-paragraph (3), and of carrying out any additional dredging of the waterway necessitated by the exercise of any of the powers of this Order but if the cost of maintaining the waterway, or of works of renewal of the waterway, is reduced in consequence of any such works, a capitalised sum representing such reasonable saving must be set off against any sum payable by the Council to the Trust under this paragraph.

(5) In the event that the Council fails to complete the construction of, or part of, the specified works the Trust may, if it is reasonably required in order to avoid detriment, construct any of the specified works, or part of such works, (together with any adjoining works) in order to complete the construction of, or part of, the specified works and the Council must reimburse the Trust all costs, fees, charges and expenses it has reasonably incurred in carrying out such works.

*Design of works*

**60.** Without affecting its obligations under the provisions of this Part of this Schedule the Council must consult, collaborate and respond constructively to any approach, suggestion, proposal or initiative made by the Trust on—

- (a) the design and appearance of the specified works, including the materials to be used for their construction; and
- (b) the environmental effects of the specified works;

and must have regard to such views as may be expressed by the Trust to the extent that these accord with the requirements of the local planning authority in response to such consultation pursuant in particular to the requirements imposed on the Trust by section 22 (general environmental and recreational duties) of the British Waterways Act 1995(38) and to the interest of the Trust in preserving and enhancing the environment of its waterways.

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(38) 1995 c. i.

### *Notice of works*

**61.** The Council must give to the engineer 56 days' notice of its intention to commence the construction of any of the specified or protective works, or, in the case of repair carried out in an emergency, such notice as may be reasonably practicable so that, in particular, the Trust may where appropriate arrange for the publication of notices bringing those works to the attention of users of the Trust's network.

### *Lighting*

**62.** The Council must provide and maintain at its own expense in the vicinity of the specified or protective works such temporary lighting and such signal lights for the control of navigation as the engineer may reasonably require during the construction or failure of the specified or protective works.

### *Construction of specified works*

**63.—**(1) Any specified 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 59(3) and paragraph 60;
- (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;
- (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 waterways, except to the extent that temporary obstruction has otherwise been agreed by the Trust.

(2) Nothing in this Order authorises the Council to make or maintain any permanent works in or over the waterway so as to impede or prevent (whether by reducing the width of the waterway or otherwise) the passage of any relevant vessel.

(3) For the purpose of sub-paragraph (2) a relevant vessel is a vessel of a kind and dimensions for the use of which the Trust is required by section 105(1)(b) and (2) of the Transport Act 1968<sup>(39)</sup> (maintenance of waterways) to maintain the waterway.

(4) Following the completion of the construction of the specified works the Council must restore the waterway to a condition no less satisfactory than its condition immediately prior to the commencement of those works.

### *Prevention of pollution*

**64.** The Council 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 waterway 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.

### *Access to work: provision of information*

**65.—**(1) The Council 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

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<sup>(39)</sup> 1968 c. 73. This is amended by Schedule 2 of S.I. 2012/1659.

- (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 the Council 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 the Council with such information as it may reasonably require with regard to such works or the method of constructing them and the Council must reimburse the Trust's reasonable costs in relation to the supply of such information.

#### *Alterations to waterway*

**66.**—(1) If during the construction of a specified work or a protective work or during a period of 24 months after the completion of those works any alterations or additions, either permanent or temporary, to the waterway are reasonably necessary in consequence of the construction of the specified work or the protective work in order to avoid detriment, and the Trust gives to the Council reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the Council must pay to the Trust the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by the Trust in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If the cost of maintaining, working or renewing the waterway is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the Council to the Trust under this paragraph.

#### *Maintenance of works*

**67.** 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 the Council informing it that the state of maintenance of the work appears to be such that the work is causing or likely to cause detriment, the Council 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.

#### *Repayment of the Trust's fees, etc.*

**68.** The Council must repay to the Trust all fees, costs, charges and expenses reasonably incurred by the Trust—

- (a) in constructing any protective works under the provisions of paragraph 59(3)(a);
- (b) in respect of the approval by the engineer of plans submitted by the Council and the 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, watchkeepers and other persons whom it is reasonably necessary to appoint for inspecting, watching and lighting any waterway and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure 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 Trust's network.

*Costs of alterations, etc.*

**69.** Any additional expenses which the Trust may reasonably incur in altering, reconstructing or maintaining the waterway under any powers existing at the date when this Order was made by reason of the existence of a specified work, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the Council, are to be repaid by the Council to the Trust.

*Making good of detriment; compensation and indemnity, etc.*

**70.**—(1) If any detriment is caused by the construction or failure of the specified works or the protective works if carried out by the Council, the Council (if so required by the Trust) must make good such detriment and pay to the Trust all reasonable 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.

(2) The Council is responsible for and must make good to the Trust all costs, charges, damages, expenses and losses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by the Trust—

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

and subject to sub-paragraph (4) the Council must effectively indemnify and hold harmless the Trust from and against all claims and demands arising out of or in connection with any of the matters referred to in paragraphs (a) and (b).

(3) The fact that any act or thing may have been done by the Trust on behalf of the Council or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision or in accordance with any directions or awards of an arbitrator does not (if it was done without negligence on the part of the Trust or of any person in its employ or of its contractors or agents) excuse the Council from any liability under the provisions of this paragraph.

(4) The Trust must give the Council 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 the Council.

*Details of capitalised sums to be provided*

**71.** If the Trust or the Council cannot jointly agree the formula by which the capitalised sum (referred to in paragraphs 59(4) and 66) is calculated it is to be settled by arbitration in accordance with article 47 (arbitration).

*Arbitration*

**72.** Any difference arising between the Council and the Trust under this Part of this Schedule (other than a difference as to the meaning or construction of this Part of this Schedule) is to be referred to and settled by arbitration in accordance with article 47 (arbitration).

## PART 6

### PROTECTION FOR THE ENVIRONMENT AGENCY

**73.**—(1) The following provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the Council and the Agency.

(2) In this Part of this Schedule—

“the Agency” means the Environment Agency;

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

“drainage work” means any watercourse and includes any land which provides or is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

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

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

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 16 metres of a drainage work or is otherwise likely to—

- (a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
- (b) affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;
- (c) cause obstruction to the free passage of fish or damage to any fishery; or
- (d) affect the conservation, distribution or use of water resources.

**74.**—(1) Before beginning to construct any specified work, the Council must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the submission of the plans reasonably require.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 85.

(3) Any approval of the Agency 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 submission of the plans for approval and, in the case of a refusal, accompanied by a statement of the grounds of refusal; and
- (c) may be given subject to such reasonable requirements as the Agency may make for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties.

(4) The Agency 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).

**75.** Without limitation on the scope of paragraph 74, the requirements which the Agency may make under that paragraph include conditions requiring the Council at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

**76.**—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 75, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part of this Schedule; and
- (b) to the reasonable satisfaction of the Agency,

and an officer of the Agency is entitled to watch and inspect the construction of such works.

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

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

(4) Subject to sub-paragraph (5) and paragraph 80, if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served upon the Council, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any expenditure incurred by it in so doing is recoverable from the Council.

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

**77.**—(1) Subject to sub-paragraph (5) the Council 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 or on land held by the Council for the purposes of, or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

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

(3) Subject to paragraph 80, if, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the Council, the Council has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the Council.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not except in a case of 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 Agency, or which the Agency or another person is liable to maintain and is not prescribed 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.

**78.** Subject to paragraph 80, 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 the Council to the reasonable satisfaction of the Agency and if the Council fails to do so, the Agency may make good the impairment or damage and recover from the Council the expense reasonably incurred by it in doing so.

**79.**—(1) The Council 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 the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the Council 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 80, if within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the Council fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and may recover from the Council the expense reasonably incurred by it in doing so.

(4) Subject to paragraph 80, in any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the Council the reasonable cost of so doing provided that notice specifying those steps is served on the Council as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

**80.** Nothing in paragraphs 76(4), 77(3), 78, 79(3) and (4) authorises the Agency to execute works on or affecting a railway forming part of the authorised works without the prior consent in writing of the Council such consent not to be unreasonably withheld or delayed.

**81.** The Council must indemnify the Agency in respect of all costs, charges and expenses which the Agency may reasonably incur or have to pay or which it may sustain—

- (a) in the examination or approval of plans under this Part of this Schedule; and
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule.

**82.**—(1) Without affecting the other provisions of this Part of this Schedule, the Council must indemnify the Agency from all claims, demands, proceedings, costs, damages, expenses or loss, which may be made or taken against, recovered from, or incurred by, the Agency by reason of—

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

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

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

**83.** The fact that any work or thing has been executed or done by the Council in accordance with a plan approved or deemed to be approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the Council from any liability under the provisions of this Part of this Schedule.

**84.** For the purposes of section 109 of the Water Resources Act 1991<sup>(40)</sup> (as to structures in, over or under a main river) as applying to the construction of any specified work, any consent or approval given or deemed to be given by the Agency under this Part of this Schedule with respect to such construction is deemed also to constitute a consent or approval under that section.

**85.** Any dispute arising between the Council and the Agency under this Part of this Schedule, if the parties agree, is to be determined by arbitration under article 47 (arbitration), but otherwise is to be determined by the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Transport acting jointly on a reference to them by the Council or the Agency, after notice in writing by one to the other.

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## EXPLANATORY NOTE

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

This Order authorises Hertfordshire County Council (“the Council”) to construct and operate a rail link extending the London Underground Limited (“LUL”) Metropolitan Line from Croxley to Watford Junction via Watford High Street station. The Order authorises the acquisition and use of land for the purposes of the works and confers powers in connection with construction and operation of the railway.

The powers are conferred on the Council in the first instance, but the Order authorises the transfer of the powers by agreement to LUL or Network Rail.

A copy of the deposited plans and the deposited sections and Book of Reference mentioned in the Order and certified in accordance with article 44 may be inspected at County Hall, Pegs Lane, Hertford SG13 8DQ.

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<sup>(40)</sup> 1991 c. 57.

