

2012 No. 2284

INFRASTRUCTURE PLANNING

**The Network Rail (Ipswich
Chord) Order 2012**

Made - - - -

5th September 2012

Coming into force - -

26th September 2012



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An application has been made to the Infrastructure Planning Commission in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(a) for an Order under sections 37, 114, 115, 120 and 122 of the Planning Act 2008(b) (“the 2008 Act”).

The application was examined by a single Commissioner (appointed by the Chair of the Infrastructure Planning Commission) in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010(c).

The Commissioner, having considered the representations made and not withdrawn and the application together with accompanying documents, in accordance with section 83 of the 2008 Act, has submitted a report to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn, and the report of the Commissioner, has decided to make an Order granting development consent for the development described in the application and consent for ancillary works with modifications which in the opinion of the Secretary of State do not make any substantial change to the proposals comprised in the application.

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 120 and 122 of, and paragraphs 1 to 3, 10 to 17, 24, 26, 36 and 37 of Part 1 of Schedule 5 to, the 2008 Act, makes the following Order—

PART 1 PRELIMINARY

Citation and Commencement

1. This Order may be cited as the Network Rail (Ipswich Chord) Order 2012 and comes into force on 26th September 2012.

Interpretation

2.—(1) In this Order—

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

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

(a) S.I. 2009/2264.

(b) 2008 c. 29, as amended by the Localism Act 2011 (c. 20).

(c) S.I. 2010/103.

(d) 1961 c. 33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c. 65). There are other amendments to the 1980 Act which are not relevant to this Order.

(e) 1965 c. 56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c. 34). Section 11(1) and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c. 23). Section 13 was amended by section 139 of the Tribunals, Courts

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

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

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

“the 2008 Act” means the Planning Act 2008;

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

“ancillary works” means any works authorised by this Order which are not development within the meaning of section 32 of the 2008 Act;

“authorised development” means the development and associated development described in Part 1 (authorised development) of Schedule 1 (authorised development and requirements) and any other development authorised by this Order, which is development within the meaning of section 32 of the 2008 Act;

“the authorised project” means the authorised development and the ancillary 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 1980 Act;

“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act;

“the design drawings” means the drawings submitted under regulation 5(2)(o) of the Regulations and certified as the design drawings by the Secretary of State for the purposes of the 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;

“the Environmental Statement” means the document certified as the environmental statement by the Secretary of State for the purposes of this Order;

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

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

“the land plans” means the plans submitted under regulation 5(2)(i) of the Regulations and certified as the land plans by the Secretary of State for the purposes of this Order;

and Enforcement Act 2007 (c. 15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c. 39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.

- (a) 1980 c. 66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c. 22); sections 1(2), (3) and (4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c. 51); section 1(2A) was inserted by, and section 1(3) was amended by, section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c.29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 36(2) was amended by section 4(1) of, and paragraphs 47 (a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c. 71), by S.I. 2006/1177, by section 4 of and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11), by section 64(1) (2) and (3) of the Transport and Works Act 1992 (c. 42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c. 37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c. 51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c. 29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c. 15). There are other amendments to the 1980 Act which are not relevant to this Order.
- (b) 1990 c. 8. Section 206(1) was amended by section 192(8) to, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c. 29) (date in force to be appointed see section 241(3), (4)(a),(c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.
- (c) 1991 c. 22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c. 26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).

“limits of deviation” means the limits of deviation referred to in article 7 (limits of deviation);

“maintain” includes to inspect, repair, adjust, alter, remove, reconstruct or replace and any derivative of “maintain” 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;

“Order land” means the land shown on the land plans which is within the limits of land to be acquired or used and described in the book of reference, but does not include the land numbered 2 on the land plans;

“Order limits” means the limits of deviation and the limits of additional land to be used shown on the works plans, but does not include the land numbered 2 on the land plans;

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

“relevant planning authority” means the district planning authority for the area in which the land to which the provisions of this Order apply is situated;

“the Regulations” means the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009;

“the sections” unless otherwise stated in this Order means the sections and elevations shown on the design drawings and works plans certified as the design drawings and works plans by the Secretary of State for the purposes of this Order;

“statutory undertaker” means any statutory undertaker for the purposes of section 127(8), 128(5) or 129(2) of the 2008 Act;

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

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

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

“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; and

“the works plans” unless otherwise stated in this Order means the plans submitted under regulation 5(2)(j) of the Regulations and certified as the works plans by the Secretary of State for the purposes of this Order.

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

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised project are taken to be measured along that work.

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

(5) References in this Order to numbered works are references to the works as numbered in Part 1 of Schedule 1.

Incorporation of the Railways Clauses Acts

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

(a) 1981 c. 67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). There are other amendments to the 1981 Act which are not relevant to this Order.

(b) 1845 c. 20. Section 46 was amended by sections 109(1) and (3) of, and paragraph 22 of Schedule 8, and Schedule 10 to, the Courts Act 2003 (c. 39). Section 58 was amended by section 46 of, and Part 3 of Schedule 7 to, the Justices of the Peace Act 1949 (c. 101). Section 78 was amended by section 39(3) of, and Schedule 7 to, the Compulsory Purchase Act 1968 (c. 56) and articles 5(1) and (2) of, and paras 1 and 3 of Schedule 7 to, S.I. 2009/1307. Section 105 was amended by section 46 of, and Part 3 of Schedule 7 to, the Justices of the Peace Act 1949 (c. 101), and section 31(6) of the Criminal Law Act 1977 (c.

section 46 (crossing of roads—level crossings), subject to paragraph (4);
 section 58 (company to repair roads used by them), except for the words from “and if any question” to the end;
 section 61 (company to make sufficient approaches and fences to highways crossing on the level);
 section 68 (accommodation works by company);
 section 71 (additional accommodation works by owners), except for the words “or directed by such justices to be made by the company” and “or, in case of difference, as shall be authorised by two justices”;
 sections 72 and 73 (supplementary provisions relating to accommodation works);
 section 77 (presumption that minerals excepted from acquisition of land);
 sections 78 to 83, 85 to 85E and Schedules 1 to 3 (minerals under railways), as respectively substituted and inserted by section 15 of the Mines (Working Facilities and Support) Act 1923(a); and
 section 105 (carriage of dangerous goods on railway), except for the words from “and if any person” to “for every such offence”.

(2) The following provisions of the Railways Clauses Act 1863(b) are incorporated in this Order—

sections 5 and 7 (level crossings); and
 section 12 (signals, watchmen etc.).

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

“the company” means Network Rail;

“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;

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

“the special Act” means this Order.

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

Disapplication of legislative provisions

4. The following provisions do not apply in relation to the construction of works carried out for the purpose of, or in connection with, the construction or maintenance of the authorised project—

(a) section 109 (structures in, over or under a main river) of the Water Resources Act 1991(c);

45), and sections 37 and 49 of the Criminal Justice Act 1982 (c. 48). There are other amendments to the 1845 Act not relevant to this Order.

(a) 1923 c. 20. Section 15 was amended by section 10(1) of the Decimal Currency Act 1969 (c. 19).

(b) 1863 c. 92.

(c) 1991 c. 57. Section 106 was amended by the Water Act 2003 (c. 37), sections 36(2) and 99 subject to the transitional provisions contained in article 6 of, and Schedule 3 to, S.I. 2004/641. There are other amendments to section 106 which are not relevant to this Order.

- (b) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 to the Water Resources Act 1991, which require consent or approval for the carrying out of the works;
- (c) section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991(a).

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

5.—(1) Subject to the provisions of this Order and to the requirements in Part 2 (requirements) of Schedule 1 (authorised development and requirements) Network Rail is granted—

- (a) development consent for the authorised development; and
- (b) consent for the ancillary works,

to be carried out within the Order limits.

(2) Subject to article 7 (limits of deviation) the authorised development comprising the works numbered in Part 1 of Schedule 1 may only be constructed in the lines and situations shown on the works plans and the levels shown on the sections.

Maintenance of authorised project

6. Network Rail may at any time maintain the authorised project, except to the extent that this Order or an agreement made under this Order, provides otherwise.

Limits of deviation

7.—(1) Subject to paragraph (2), in carrying out the authorised development comprising the works numbered in Part 1 (authorised development) of Schedule 1 (authorised development and requirements) Network Rail may—

- (a) deviate laterally from the lines or situations of the authorised development shown on the works plans and design drawings to the extent of the limits of deviation shown on the works plans; and
- (b) deviate vertically from the levels of the authorised development shown on the sections within the works plans and design drawings—
 - (i) to any extent not exceeding 1 metre upwards; or
 - (ii) to any extent downwards as may be found to be necessary or convenient.

(2) No deviation is authorised under paragraph (1) which would—

- (a) in any way diminish the headroom or clearance beneath any proposed bridge structure or above any stairway; or
- (b) in any way diminish the breadth of any walkway, staircase, flight of steps, carriageway, tunnel, footpath or cycleway,

by more than 200 millimetres from its dimension as shown on the design drawings.

Benefit of Order

8.—(1) The provisions of this Order conferring powers on Network Rail have effect solely for the benefit of Network Rail.

(a) 1991 c. 59.

(2) Paragraph (1) is—

- (a) subject to paragraph (5) of article 18 (compulsory acquisition of rights); and
- (b) does not apply to the benefit of the consent granted by this Order for works for the benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised project.

PART 3 STREETS

Street works

9.—(1) Network Rail may, for the purposes of the authorised project, enter on any of the streets specified in Schedule 2 (streets subject to street works) within the Order limits to the extent necessary and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) place temporary apparatus in the street and permanent apparatus under the street;
- (c) maintain temporary apparatus in the street and permanent apparatus under the street and, in either case, change its position;
- (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 and “in” as referring to apparatus in the street, means under, over, across, along or upon the street.

Application of the 1991 Act

10.—(1) The provisions of the 1991 Act mentioned in paragraph (2) which, together with other provisions of that Act, apply in relation to the carrying out of street works and any regulations made or code of practice issued or approved under those provisions apply (with the necessary modifications) in relation to the temporary stopping up, temporary alteration or temporary diversion of a street by Network Rail under the powers conferred by article 11 (temporary stopping up of streets) and the carrying out of works under article 9 (street works) whether or not the stopping up, alteration or diversion, or the carrying out of such works, constitutes street works within the meaning of that Act.

(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 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 included a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

Temporary stopping up of streets

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

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

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

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

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

(5) Network Rail must not temporarily stop up, alter or divert—

- (a) any street specified as mentioned in paragraph (4) without first consulting the street authority; and
- (b) 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) During any period that the footpath and cycleway on the west bank of the River Gipping is stopped up between points E and F Network Rail must provide and maintain an alternative means of access between those points on land within the Order limits.

(7) 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.

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

Traffic signs

12.—(1) Network Rail may, for the purposes of, or in connection with, the control of construction traffic entering the site of the authorised development, and after consultation with the traffic authority, place or maintain traffic signs of a type prescribed by regulations made under section 64(1)(a) (general provisions as to traffic signs) of the Road Traffic Regulation Act 1984^(a) (“the 1984 Act”) or of a character authorised by the Secretary of State at or adjoining the junction between Hadleigh Road and the access road leading to that site.

(2) Any power conferred by section 65 of the 1984 Act to give directions to a traffic authority or local traffic authority as to traffic signs includes a power to give directions to Network Rail as to traffic signs under this article; and, accordingly, the powers conferred by paragraph (1) are exercisable subject to and in conformity with any directions given under that section.

(3) Expressions used in this article and in the 1984 Act have the same meaning in this article as in the Act.

(a) 1984 c. 27.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

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

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

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

(4) Network Rail must not make any opening into any public sewer or drain except—

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

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

(5) Network Rail must not, in carrying out or maintaining works further to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) Network Rail must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to 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(b).

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

(9) In this article—

(a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board, or a local authority; and

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

Protective work to buildings

14.—(1) Subject to the following provisions of this article, Network Rail may at its own expense carry out such protective works to any building lying within the area shown numbered 29 on the land plans as Network Rail considers necessary or expedient.

(2) Protective works may be carried out—

(a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised project; or

(a) 1991 c. 56.
(b) S.I. 2010/675.
(c) 1991 c. 57.

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

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

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

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

(5) Before exercising—

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

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

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 34 (arbitration).

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

(8) Where—

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

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

(9) Nothing in this article relieves Network Rail from any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance).

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

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

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised project; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised project.

Authority to survey and investigate the land

15.—(1) Network Rail may for the purposes of this Order enter on any land shown within the Order limits and—

- (a) survey or investigate the land;
- (b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions on the land as Network Rail thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (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.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.

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

- (a) must, if so required, produce written evidence of their authority to do so; and
- (b) may take with them 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 land located within the highway boundary 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) Network Rail must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

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

- (a) under paragraph (4)(a) in the case of a highway authority; or
- (b) under paragraph (4)(b) in the case of a street authority;

that authority is deemed to have granted consent.

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

16.—(1) Network Rail may acquire compulsorily so much of the Order land as is required for the authorised project or to facilitate, or is incidental to, it.

(2) This article is subject to paragraph (2) of article 18 (compulsory acquisition of rights) and paragraph (8) of article 23 (temporary use of land for carrying out the authorised project) and does not apply to the land numbered 3, 12, 13, 19a, 29 and 48 on the land plans (land required for highway work sites, protective works and erection of traffic signs).

Time limit for exercise of authority to acquire land compulsorily

17.—(1) After the end of the period of 5 years beginning on the day on which the Order is made—

- (a) no notice to treat is to be served under 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^(a) as applied by article 20 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 23 (temporary use of land for carrying out the authorised project) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents Network Rail remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights

18.—(1) Subject to paragraph (2), Network Rail may acquire compulsorily such rights over the Order land as may be required for any purpose for which that land may be acquired under article 16 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of Schedule 4 (land in which only new rights etc. may be acquired) Network Rail's powers of compulsory acquisition are limited to the acquisition of such new rights as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

(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 Network Rail acquires a right over land under paragraph (1) or (2) Network Rail 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 of a right over land by the creation of a new right.

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

(6) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (5) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by Network Rail.

Private rights

19.—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order are extinguished —

- (a) as from the date of acquisition of the land by Network Rail, whether compulsorily or by agreement; or

^(a) 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c. 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are other amendments to the 1981 Act which are not relevant to this Order.

- (b) on the date of entry on the land by Network Rail under section 11(1) of the 1965 Act (power of entry),

whichever is the earliest.

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

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

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights over land owned by Network Rail which, being within the limits of land which may be acquired or used shown on the land plans, are required for the purposes of this Order are extinguished on the appropriation of the land by Network Rail for any of those purposes.

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

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation in accordance with the terms of section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 24 (statutory undertakers) applies.

(7) Paragraphs (1) to (3) have effect subject to—

- (a) any notice given by Network Rail before—
 - (i) the completion of the acquisition of the land or the acquisition of rights over the land;
 - (ii) Network Rail's appropriation of it;
 - (iii) Network Rail's entry onto it; or
 - (iv) Network Rail's taking temporary possession of it,that any or all of those paragraphs do not apply to any right specified in the notice; and
- (b) any agreement made at any time between Network Rail and the person in or to whom the right in question is vested or belongs.

(8) If any such agreement as is referred to in paragraph (7)(b)—

- (a) is made with a person in or to whom the right is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) Reference in this article to private rights over land includes reference to any trusts or incidents to which the land is subject.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

20.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981 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.

(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 in the Compulsory Purchase (Vesting Declarations) Act 1981 are construed as references to that Act as applied by section 125 of the 2008 Act (application of compulsory acquisition provisions) to the compulsory acquisition of land under this Order.

Acquisition of subsoil or airspace only

21.—(1) Network Rail may acquire compulsorily so much of, or such rights in, the subsoil of or the airspace over the land referred to in article 16(1) (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

(3) Paragraph (2) does not prevent article 22 (acquisition of part of certain properties) from applying where Network Rail acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Acquisition of part of certain properties

22.—(1) This article applies instead of section 8(1) of the 1965 Act (other provisions as to divided land) (as applied by section 125 of the 2008 Act (application of compulsory acquisition provisions)) 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 Network Rail 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 Network Rail agrees to take the land subject to the counter-notice, to be referred to the tribunal.

(5) If on such a reference the tribunal determines 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) where the land subject to the notice to treat consists 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 determines 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) where the land subject to the notice to treat consists 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 determines 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 Network Rail is authorised to acquire compulsorily under this Order.

(8) If Network Rail agrees to take the land subject to the counter-notice, or if the tribunal determines 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 Network Rail is authorised to acquire compulsorily under this Order.

(9) Where by reason 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, Network Rail may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, in that event, 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, Network Rail 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.

Temporary use of land for carrying out the authorised project

23.—(1) Network Rail may, in connection with the carrying out of the authorised project—

- (a) enter on and take temporary possession of—
 - (i) the land specified in columns (1) and (2) of Schedule 6 (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 part of the authorised project specified in column (4) of that Schedule;
 - (ii) subject to paragraph (11), any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (powers of entry) (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 (execution of declaration);
- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
- (d) construct any works specified in relation to that land in column (3) of Schedule 6, or any other mitigation works.

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

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

- (a) in the case of land specified in paragraph (1)(a)(i) after the end of the period of one year beginning with the date of completion of the part of the authorised project specified in relation to that land in column (4) of Schedule 6; or
- (b) in the case of land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of this land was taken unless Network Rail has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declaration) Act 1981.

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

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

(5) Network Rail must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of 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) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised project, other than loss or damage for which compensation is payable under paragraph (5).

(8) Network Rail may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that Network Rail is not precluded from—

- (a) acquiring new rights over any part of that land under article 18 (compulsory acquisition of rights); or
- (b) acquiring any part of the subsoil of or airspace over (or rights in the subsoil of or airspace over) that land under article 21 (acquisition of subsoil or airspace only).

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

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) Paragraph (1)(a)(ii) does not authorise Network Rail to take temporary possession of any land which it is not authorised to acquire under article 16 (compulsory acquisition of land) or any land specified in Schedule 4 (land in which only new rights etc. may be acquired).

Statutory undertakers

24. Subject to the provisions of Schedule 7 (protective provisions), Network Rail may—

- (a) acquire compulsorily, or acquire new rights over, the land belonging to statutory undertakers shown on the land plans within the limits of the land to be acquired or used and described in the book of reference;
- (b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers over or within the Order land.

Recovery of costs of new connections

25.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 24 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from Network Rail compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 24, any person who is—

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

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

(3) In this paragraph—

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

“public utility undertaker” has the same meaning as in the 1980 Act.

(a) 2003 c. 21. There are amendments to this Act which are not relevant to this Order.

PART 6

OPERATIONS

Operation and use of railway

26.—(1) Network Rail may operate and use the railway and any other elements of the authorised project 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(a) (the provision of railway services).

Felling or lopping of trees

27.—(1) Network Rail may fell or lop any tree or shrub within or overhanging land within the Order limits, 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 project or any apparatus used in connection with the authorised project; or
- (b) from constituting a danger to passengers or other persons using the authorised project.

(2) In carrying out any activity authorised by paragraph (1), Network Rail must not cause unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(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.

PART 7

MISCELLANEOUS AND GENERAL

Operational land for purposes of the 1990 Act

28. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

Defence to proceedings in respect of statutory nuisance

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

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by Network Rail for the purposes of or in connection with the construction or maintenance of the authorised project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction site), or a consent given

(a) 1993 c. 43. This Act has been amended by the Transport Act 2000 (c. 38), the Railways and Transport Safety Act 2003 (c. 20) and the Railways Act 2005 (c. 14). There are other amendments to this Act which are not relevant to this Order.

(b) 1990 c. 43. There are amendments to this Act which are not relevant to this Order.

under section 61 (prior consent for work on construction site) or section 65 (noise exceeding registered level), of the Control of Pollution Act 1974(a); or

- (ii) is a consequence of the construction or maintenance of the authorised project and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
 - (i) relates to premises used by Network Rail for the purposes of or in connection with the use of the authorised project and that the nuisance is attributable to the use of the authorised project which is being used in accordance with a scheme of mitigation of noise approved by the relevant planning authority as described in requirement 10 (noise mitigation Railway Cottages) in Part 2 (requirements) of Schedule 1 (authorised development and requirements); or
 - (ii) is a consequence of the use of the authorised project and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), does not apply where the consent relates to the use of premises by Network Rail for the purposes of or in connection with the construction or maintenance of the authorised project.

Protections of interests

30. Schedule 7 (protective provisions) has effect.

Application of the Land Compensation Act 1973

31.—(1) Any regulations made by the Secretary of State under section 20 (sound proofing of buildings affected by public works) and 20A (power to make payments in respect of caravans and other structures affected by noise of public works) of the Land Compensation Act 1973(b) which apply to a railway provided or used in the exercise of statutory powers apply to the railway comprised in the authorised project as if that railway was provided or used in the exercise of statutory powers.

(2) Section 28 (power to pay expenses) of the Land Compensation Act 1973 has effect as if any works comprised in the authorised project were public works for the purposes of that section.

Certification of plans etc.

32.—(1) Network Rail must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the book of reference as submitted in the application for this Order;
- (b) the land plans as submitted in the application for this Order—
 - Sheet 1 May 2011;
 - Sheet 2 May 2011;
 - Sheet 3 May 2011; and
 - Sheet 4 May 2011;
- (c) the works plans—

(a) 1974 c. 40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c. 25. There are other amendments to the 1974 Act which are not relevant to this Order.

(b) 1973 c. 26. Section 20 was amended by subsections (6) and (12) of section 146 of, and Schedule 13 to, the Road Traffic Regulation Act 1984 (c. 27). Subsection (10) of section 20 was repealed by section 343(3) of, and Schedule 25 to, the Highway Act 1980 (c. 66) and subsection (11) was repealed by section 155 of, and Schedule 25 to, the Rent Act 1977 (c. 42). There are other amendments to the 1973 Act which are not relevant to this Order.

B1469500-IPS/IP.GAD/0003 Rev A02 dated 29 November 2011 and submitted to the Examining authority in connection with the examination of the application for this Order;
B1469500-IPS/IP.GAD/0004 Rev A02 dated 29 November 2011 and submitted to the Examining authority in connection with the examination of the application for this Order;
B1469500-IPS/IP.GAD/0005 Rev A01 as submitted in the application for this Order;
B1469500-IPS/IP.GAD/0006 Rev A01 as submitted in the application for this Order;
B1469500-IPS/IP.GAD/0007 Rev A01 as submitted in the application for this Order;
B1469500-IPS/IP.GAD/0008 Rev A01 as submitted in the application for this Order; and
B1469500-IPS/IP.GAD/0009 Rev A01 as submitted in the application for this Order;

(d) the design drawings as submitted in the application for this Order—

B1469500-IPS/IP.GAD/0101 Rev A02;
B1469500-IPS/IP.GAD/0010 Rev A02;
B1469500-IPS/IP.GAD/0011 Rev A02;
B1469500-IPS/IP.GAD/0022 Rev A02;
B1469500-IPS/IP.GAD/0030 Rev A02;
B1469500-IPS/IP.GAD/0040 Rev A02;
B1469500-IPS/IP.GAD/0042 Rev A02;
B1469500-IPS/IP.GAD/0043 Rev A02;
B1469500-IPS/IP.GAD/0050 Rev A02;
B1469500-IPS/IP.GAD/0060 Rev A02;
B1469500-IPS/IP.GAD/0061 Rev A02;
B1469500-IPS/IP.GAD/0070 Rev A02;
B1469500-IPS/IP.GAD/0071 Rev A02;
B1469500-IPS/IP.GAD/0072 Rev A02;
B1469500-IPS/IP.GAD/0074 Rev A02; and

(e) the environmental statement as submitted in the application for this Order,

for certification that they are true copies of the plans, drawings and documents referred to in this Order.

(2) A plan, drawing or 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

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

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (8) by electronic transmission.

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

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

- (a) 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 only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

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

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

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

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

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

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

Arbitration

34. 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.

(a) 1978 c. 30.

Procedure in relation to approvals etc. under requirements

35. Where an application is made for any consent, agreement or approval required by a requirement under Part 2 (requirements) of Schedule 1 (authorised development and requirements), the following provisions apply, so far as they relate to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission, as if the requirement was a condition imposed on the grant of planning permission—

- (a) sections 78 and 79 of the 1990 Act (right of appeal in relation to planning decisions); and
- (b) any orders, rules or regulations which make provision in relation to appeals under section 78 of the 1990 Act.

Signed by authority of the Secretary of State for Transport

5th September 2012

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

SCHEDULES

SCHEDULE 1

Article 5

AUTHORISED DEVELOPMENT AND REQUIREMENTS

PART 1

AUTHORISED DEVELOPMENT

A nationally significant infrastructure project as defined in sections 14 and 25 of the 2008 Act comprising—

In the county of Suffolk, districts of Ipswich and Babergh

Work No. 1 – A railway 1,415 metres in length, commencing at a point on the existing Great Eastern Main Line railway 650 metres north-west of the bridge carrying that railway over Sproughton Road, passing south-eastwards on existing embankment then passing south-eastwards over the River Gipping, curving eastwards and then north-eastwards on the south-eastern side of the River Gipping then joining the existing East Suffolk Line railway passing back over the River Gipping and terminating at a point on the East Suffolk Line railway 70 metres north-east of the bridge carrying that railway over the river.

Work No. 1 includes widening of the existing embankment carrying the Great Eastern Main Line railway on its north-eastern side supported by a retaining wall; a new bridge adjacent to the existing bridge carrying the Great Eastern Main Line railway over Sproughton Road; a bridge over the River Gipping; an embankment carrying the proposed railway on the south-eastern side of the River Gipping; and the reconstruction of bridge 404 carrying the East Suffolk Line railway over the River Gipping.

Associated development within the meaning of section 115(2) of the 2008 Act (development for which development consent may be granted) comprising—

Work No. 2 – Diversion of a surface water sewer, commencing at a point 75 metres south of the junction of Sproughton Road and Boss Hall Road, passing south-eastwards and terminating by means of an outfall into the River Gipping at a point 55 metres north-east of the bridge carrying the Great Eastern Main Line railway over the river;

Work No. 3 – Extension of the training wall on the southern side of the River Gipping between points R1 and R2 on the works plans;

Work No. 4 – An access road commencing at a point 205 metres south of the bridge carrying the East Suffolk Line railway over the River Gipping passing north-eastwards through the proposed embankment (Work No. 1) by means of an underpass, then passing south-westwards by means of a ramp and terminating at a point on the said embankment 110 metres south-west of the point of commencement;

and in connection with such works further associated development within Order limits consisting of—

- (a) demolition of the former cold store building at the Harris Factory site;
- (b) electrical equipment and signalling works;
- (c) ramps, means of access, cyclepaths and footpaths;

- (d) embankments, aprons, abutments, retaining walls, wing walls and culverts;
- (e) works to alter the position of apparatus, including mains, sewers, drains and cables;
- (f) works to alter the course of, or otherwise interfere with, a watercourse other than a navigable watercourse;
- (g) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised project;
- (h) works for the benefit or protection of land affected by the authorised project;
- (i) working sites in connection with the construction of the authorised project;
- (j) a temporary structure secured to the north bank of the River Gipping to support a footpath and cycleway for use as a temporary replacement for any part of the existing footpath and cycleway while that part is stopped up under article 11 (temporary stopping up of streets); and
- (k) such other works as may be necessary or expedient for the purposes of or in connection with the construction of the authorised project and which fall within the scope of the environmental impact assessment recorded in the Environmental Statement.

For the purpose of the description of further associated development, the Order limits do not include so much of Boss Hall Road as is shown numbered 33 on the land plans.

PART 2 REQUIREMENTS

Interpretation

1. In this Part of this Schedule—

“the CR-E” means Network Rail’s Contract Requirements-Environment Issue 5, April 2004 as set out in chapter 15, Volume 3 of the Environmental Statement; and

“stage” means a defined section or part of the authorised development the extent of which is shown in a scheme submitted to and approved by the relevant planning authority pursuant to requirement 2 (stages of authorised development).

Stages of authorised development

2. No authorised development is to commence until a written scheme setting out all the stages of the authorised development has, after consultation with the highway authority, been submitted to and approved by the relevant planning authority.

In accordance with approved details

3. The authorised development must be carried out in accordance with the design drawings certified under article 32 (certification of plans etc.) unless otherwise approved by the relevant planning authority.

Landscaping

4. No stage of the authorised development is to commence until a written landscaping scheme for that stage has been submitted to and approved by the relevant planning authority. The submitted scheme must reflect the mitigation measures set out in Chapter 8, Technical Report 8, Townscape and Visual Effect Assessment in Volume 3 of the Environmental Statement, with particular reference to paragraphs 1.6.9 to 1.6.18 of the Chapter. The landscaping scheme must include details of—

- (a) location, number, species, size and planting density of any proposed planting;

- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) implementation timetables for all landscaping work;
- (d) temporary fencing to protect trees adjacent to the work
- (e) measures relating to the removal of rabbit protection provided for trees and shrubs and to the checking, adjusting and repairing of all stakes, ties, shelters and fencing used in accordance with the scheme; and
- (f) proposals to take account of the presence of trees with trunks of a diameter of 100 millimetres or more and to minimise the loss of such trees.

Implementation and maintenance of landscaping

5.—(1) All landscaping work must be carried out in accordance with the scheme and implementation timetable approved under requirement 4 (landscaping).

(2) Any tree or shrub planted as part of an approved landscaping scheme that, within a period of 5 years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless otherwise approved by the relevant planning authority.

Highway access

6.—(1) No bulk fill material required for the construction of the railway embankment on the south-east side of the River Gipping (chainage 12250 to 12550), forming part of Work No. 1, which requires access from Hadleigh Road is to be brought to site until the PCCL access improvements have been constructed (whether or not by Network Rail) to the satisfaction of the relevant planning authority and to Network Rail’s reasonable satisfaction to such standard (which may be less than final completion) as is sufficient to comply with the planning permission for so long as the road is being used (whether or not by Network Rail) for construction purposes.

(2) In this requirement, “the PCCL access improvements” means the new estate road and junction with Hadleigh Road inclusive of bridge containment works in accordance with the planning permission; and “the planning permission” means the grant of planning permission by Ipswich Borough Council no. IP/11/00120/FUL dated 13th April 2011.

Archaeology

7.—(1) No stage of the authorised development is to commence until for that stage a written scheme for the investigation of areas of archaeological interest identified at paragraph 12.8.1 of the Environmental Statement has been submitted to and approved by the relevant planning authority.

(2) The scheme is to identify areas where fieldwork and a watching brief are required and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found.

(3) Any archaeological works or watching brief carried out under the approved scheme must be by a suitably qualified person or body approved by the relevant planning authority.

(4) Any archaeological works or watching brief must be carried out in accordance with the approved scheme.

Contract Requirements-Environment

8.—(1) The authorised development must be carried out in accordance with the CR-E or as otherwise amended with the agreement of the relevant planning authority. The mitigation measures set out in the Environmental Statement must be reflected in preparing any plan required by the CR-E.

(2) The Mandatory Requirements set out in section 5 of the CR-E in respect of—

- (a) 5.10 External Communications programme;
- (b) 5.13 Pollution Incident Control Plan (which must include prior consideration of the potential sources of pollution and how they might be prevented, paying particular attention to the potential pollution impacts of the works on the River Gipping and sub-surface controlled waters and how they might be prevented); and
- (c) 5.17 Waste Management Plan (which must be prepared in accordance with the Site Waste Management Plans Regulations 2008(a)),

must be submitted to and approved by the relevant planning authority.

(3) The Pollution Incident Control Plan required under section 5.13 of the CR-E must include the minimum measures set out in section 7 of the Statement of Common Ground between Network Rail, the Environment Agency and Natural England dated 9th January 2012 on the minimum measures required for a pollution incident control plan and submitted to the Examining authority in connection with examination of the application for this Order

(4) The following matters set out in Section 6, ‘Particular Environmental Requirements’ of the CR-E are mandatory—

- (a) 6.2 Environmental Design Management Plan;
- (b) 6.3 Traffic Management Plan;
- (c) 6.4 Noise & Vibration Management Plan;
- (d) 6.6 Dust;
- (e) 6.7 Air Pollution; and
- (f) 6.15 Lighting.

(5) The dust, air pollution and lighting mitigation measures required by the CR-E must be incorporated into a Nuisance Management Plan. The Nuisance Management Plan and other plans required under section 6 of the CR-E must be submitted to and approved by the relevant planning authority.

(6) No stage of the authorised development is to be commenced until such of the plans or programmes required under sections 5.10, 5.13, 5.17, 6.2, 6.3, 6.4 of the CR-E and the Nuisance Management Plan, as relate to that stage of the development have been approved by the relevant planning authority and those plans or programmes must be implemented as approved.

Restriction on access

9. The Traffic Management Plan to be prepared in accordance with requirement 8 (Contract Requirements-Environment), as part of the CR-E, must include a prohibition on access for the construction of the authorised development by HGVs from Hadleigh Road between the hours of 08.00 and 09.00 Monday to Friday.

Noise mitigation Railway Cottages

10. Measures to mitigate the impact of idling engine noise from westbound freight trains held at signals as identified in the Environmental Statement at paragraph 1.6.10 of Volume 3 Report 6, ‘Noise and Vibration Technical Report’ on Railway Cottages, Sproughton Road, to the standard provided under the Noise Insulation (Railways and other Guided Transport Systems) Regulations 1996(b), must be submitted to the relevant planning authority for approval. The approved scheme must be completed prior to the opening of the authorised development to rail traffic.

(a) S.I. 2008/314.
 (b) S.I. 1996/428.

Contaminated land

11.—(1) Proposals for the additional investigation of potential hotspots, implementation of mitigation measures and monitoring requirements identified in the Environmental Statement Volume 3 Specialist Technical Report 11 at paragraph 1.8 concerning existing land (and groundwater) quality, prevention of future contamination and materials management within the authorised development must be incorporated into the Environmental Design Management Plan required under the CR-E in accordance with requirement 8 (Construction Requirements-Environment).

(2) In the event that previously unidentified contamination (to land or groundwater) is encountered whilst carrying out the authorised development, it must be reported in writing immediately to the relevant planning authority and a risk assessment of the contamination completed in accordance with the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

(3) Should localised remediation be required as a result of either identified or previously unidentified land or groundwater contamination, an Implementation Plan must be submitted to and approved by the relevant planning authority, including a detailed description of the nature and method of implementation of the selected remedial options, and justification for the selection of those remedial options, in accordance with the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'. Remediation must be carried out in accordance with the approved Implementation Plan.

(4) On completion of the authorised development, the findings of any additional risk assessments and the details of any remedial works completed whilst carrying out the authorised development must be submitted to and approved by the relevant planning authority within a Verification Report in accordance with the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

Ecological Management Plan

12.—(1) No stage of the authorised development is to commence until for that stage a written ecological management plan reflecting the survey results and ecological mitigation and enhancement measures included in the Environmental Statement, in particular to accord with Table 1-J, 'Proposed Mitigation During Construction' in volume 3, Report 9 (Ecology Technical Report) of the Environmental Statement has been submitted to and approved by the relevant planning authority.

(2) The ecological management plan must include an implementation timetable and must be carried out as approved.

Pedestrian/cycle access to River Gipping

13.—(1) If it is required as a condition of any planning permission for the development of the Harris Factory site that a foot and cycle path is provided linking Hadleigh Road and the River Gipping, Network Rail must, following the implementation of such development, provide access under the embankment comprised in Work No. 1 for pedestrians and cyclists via the maintenance access road comprised in Work No. 4 and must dedicate such access as a public right of way.

(2) The provision and dedication of such access is subject to such temporary closure as may be required from time to time in connection with the maintenance of the authorised development.

Finishes of bridges and graffiti

14. Details of the brickwork, sample of bricks and details of anti-graffiti coatings in respect of the new railway bridge over Sproughton Road, the new railway bridge over the River Gipping and the reconstruction of bridge 404 over the River Gipping forming part of Work No. 1, must be submitted to the relevant planning authority for approval. The construction of the three bridges must be carried out in accordance with the approved details.

Alteration, reconstruction or replacement of buildings

15. No alteration, reconstruction or replacement of a building or bridge is to be carried out under article 6 (maintenance of authorised project) except in accordance with plans and specifications approved by the relevant planning authority.

Amendments to approved details

16. With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority, the approved details are to be taken to include any amendments that may subsequently be approved by the relevant planning authority.

Street Lighting at Bridge 404

17.—(1) Before completing the reconstruction of bridge 404 over the River Gipping, Network Rail must, after consultation with the highway authority, submit to the relevant planning authority for approval a street lighting scheme for the footpath under bridge 404.

(2) Network Rail must implement the approved street lighting scheme.

(3) Upon completion of the reconstruction of bridge 404, Network Rail must transfer ownership of the installed lighting equipment to the highway authority.

Temporary cantilever footpath and cycleway

18.—(1) Subject to paragraph (2), Network Rail must not stop up the footpath and cycleway on the north bank of the River Gipping until the temporary structure referred to in paragraph (j) of Part 1 of this Schedule (“the temporary structure”) is available for use by the public.

(2) Network Rail is not obliged to comply with paragraph (1) in circumstances where it considers that for reasons of health and safety compliance is not practically possible.

(3) Before submitting plans of the temporary structure to the Environment Agency in accordance with Part 3 of Schedule 7 (protective provisions), Network Rail must consult the highway authority.

Ramps

19. No ramps of any kind are to be constructed on the land numbered 68 and 69 on the land plans.

Requirement for written approval

20. Where under any of the above requirements the approval or agreement of the relevant planning authority or another person is required, that approval or agreement must be given in writing.

SCHEDULE 2

Article 9

STREETS SUBJECT TO STREET WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to street works</i>
County of Suffolk, districts of Ipswich and Babergh	Sproughton Road
County of Suffolk, district of Ipswich	Footpath/cycleway (possible right of way) on north-west bank of River Gipping
County of Suffolk, district of Ipswich	Hadleigh Road

SCHEDULE 3

Article 11

STREETS TO BE TEMPORARILY STOPPED UP

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
County of Suffolk, district of Ipswich	Europa Way	Highway verge within Order limits between points A and B
County of Suffolk, district of Ipswich and Babergh	Sproughton Road	Between points C and D
County of Suffolk, district of Ipswich	Footpath and cycleway (possible right of way) on north-west bank of River Gipping	Between points E and F and between points G and H

SCHEDULE 4

Article 18(2)

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

<i>(1)</i> <i>Number of land shown on the land plans</i>	<i>(2)</i> <i>Purpose for which rights may be acquired</i>
33	Access for construction and maintenance of the authorised project.
44a, 45a, 46, 47, 50	Access for construction of the authorised project, regulating access over the land and installation of temporary barriers and equipment for this purpose during the construction period, and afterwards access for maintenance.

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

Compensation enactments

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

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

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 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 over land is purchased”; and
- (b) for the words “acquired or taken from him” there are substituted the words “over which the right is exercisable”.

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

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

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

(a) 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 land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

- (a) a question of disputed compensation in respect of the purchase of the right would apart from this section fall to be determined by the 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 interest and—
 - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased without material detriment to that land; or
 - (ii) where that land consists of such a park or garden, that the right cannot be purchased without seriously affecting the amenity or convenience of the house to which that land belongs,

the Network Rail (Ipswich Chord) Order 2012^(a) (“the Order”), in relation to that person, ceases to authorise the purchase of the right 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 prejudices any other power of the authority to withdraw the notice.”.

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

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

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

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 it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right (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

(a) S.I. 2012/2284.

section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

9. Section 22 of the 1965 Act (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, subject to compliance with that section as respects compensation.

SCHEDULE 6

Article 23

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> Area	<i>(2)</i> Number of land shown on the land plans	<i>(3)</i> Purpose for which temporary possession may be taken	<i>(4)</i> Relevant part of the authorised project
County of Suffolk, district of Ipswich	1	Land use: Worksite	Works Nos. 1 to 4
County of Suffolk, district of Ipswich	5, 7, 9, 9a	Land use: Worksite and access for construction of the authorised project	Works Nos. 1 to 3
County of Suffolk, district of Babergh	14, 15 and 16	Land use: Worksite and construction Permanent Works: Diverted utility apparatus	Work No. 1 (Sproughton Road bridge)
County of Suffolk, district of Ipswich	20, 20a, 22, 24, 26, 27 and 31	Land use: Worksite and access for construction of the authorised project	Works Nos. 1 to 3
County of Suffolk, district of Ipswich	35	Land use: Worksite, access for construction of the authorised project and construction Permanent Works: Underpinning	Works Nos. 1 to 3
County of Suffolk, district of Ipswich	38	Land use: Worksite and construction Permanent Works: Works to block-up existing sewer outfall, to raise level of land and to alter guardrail heights	Works Nos. 1 to 3
County of Suffolk, district of Ipswich	39	Land use: Worksite and access for construction of the authorised project	Works Nos. 1 to 3

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on the land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised project</i>
County of Suffolk, district of Ipswich	40	Land use: Worksite	Work No. 1
County of Suffolk, district of Ipswich	41	Land use: Worksite and construction Permanent Works: Works Nos. 1, 2 and 3	Works Nos. 1 and 3
County of Suffolk, district of Ipswich	42, 44, 44b, 45	Land use: Worksite and access for construction of the authorised project	Works Nos. 1 and 4
County of Suffolk, district of Ipswich	49, 51 and 55	Land use: Worksite and access for construction of the authorised project	Works Nos. 1 and 4
County of Suffolk, district of Ipswich	53 and 54	Land use: Worksite and construction Permanent Works: Environmental mitigation	Works Nos. 1 and 4
County of Suffolk, district of Ipswich	57, 58, 61, 62, 63, 64, 65a, 68, 69, 71, 73, 72, 76 and 77	Land use: Worksite and access for construction of the authorised project	Work No. 1

SCHEDULE 7

Article 30

PROTECTIVE PROVISIONS

PART 1

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

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

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(a)), belonging to or maintained by that undertaker;

(a) 1989 c. 29

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

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

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

“functions” includes powers and duties;

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

“undertaker” means—

- (e) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
 - (f) a gas transporter within the meaning of Part 1 of the Gas Act 1986(b);
 - (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 development, 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 Network Rail 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 land plans, Network Rail must not acquire any apparatus otherwise than by agreement.

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

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

(a) 1991 c. 56.

(b) 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).

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of Network Rail, or Network Rail is unable to afford such facilities and rights as are mentioned in sub-paragraph (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 Network Rail, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of Network Rail under this Part of this Schedule is to be constructed in such manner and in such line or situation as may be agreed between the undertaker in question and Network Rail or in default of agreement settled by arbitration in accordance with article 34 (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 34, 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 Network Rail to be removed under the provisions of this Part of this Schedule.

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

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

6.—(1) Where, in accordance with the provisions of this Part of this Schedule, Network Rail affords to an undertaker facilities and rights for the construction and maintenance in land of Network Rail of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between Network Rail and the undertaker in question or in default of agreement settled by arbitration in accordance with article 34 (arbitration).

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

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

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

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 Network Rail under paragraph 5(2), Network Rail must submit to the undertaker in question a plan, section and description of the works to be executed.

(2) Those works are to be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may

be made in accordance with sub-paragraph (3) by the undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the undertaker is entitled to watch and inspect the execution of those works.

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

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

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

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

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

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by Network Rail or, in default of agreement, is not determined by arbitration in accordance with article 34 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

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

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

(5) An amount which apart from this sub-paragraph would be payable to an undertaker in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to

confer on the undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

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

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

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

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

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

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

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

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

(2) In this Part of this Schedule—

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

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

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

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

“electronic communications code network” means—

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

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

(a) 2003 c. 21. See section 106.

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

12. The exercise of the powers conferred by article 24 (statutory undertakers) is subject to paragraph 23 of Schedule 2 to the Telecommunications Act 1984(a) (undertaker’s works).

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

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works, or other property of an operator); or
- (b) there is any interruption in the supply of the service provided by an operator, Network Rail must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and must—
 - (i) make reasonable compensation to 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 Network Rail with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

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

(4) Any difference arising between Network Rail and the operator under this paragraph is to be referred to and settled by arbitration under article 34 (arbitration).

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

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

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

PART 3

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

16.—(1) The following provisions apply for the protection of the Agency unless otherwise agreed in writing between Network Rail 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

(a) 1984 c. 12.

monitoring and any ancillary works constructed as a consequence of works carried out for drainage purposes;

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

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

“specified work” means the temporary structure set out at (j) in Part 1 (authorised development) of Schedule 1 (authorised development and requirements) and 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; and

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

17.—(1) Before beginning to construct any specified work, Network Rail 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 receipt of the plans reasonably require.

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

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

- (a) must not be unreasonably withheld or delayed;
- (b) is deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans or receipt of further particulars if such particulars have been required by the Agency 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).

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

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

by reason of any specified work.

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

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under 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) Network Rail 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 completed.

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

(4) 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 Network Rail at Network Rail's own expense to comply with the requirements of this Part of this Schedule or (if Network Rail so elects and the 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.

(5) Subject to sub-paragraph (6) and paragraph 23, if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served upon Network Rail, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any expenditure incurred by it in so doing is recoverable from Network Rail.

(6) In the event of any dispute as to whether sub-paragraph (4) 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 (5) until the dispute has been finally determined.

20.—(1) Subject to sub-paragraph (6) Network Rail must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by Network Rail for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which Network Rail is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require Network Rail to repair and restore the work, or any part of such work, or (if Network Rail so elects and the 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 23, if, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on Network Rail, Network Rail has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from Network Rail.

(4) If there is any failure by Network Rail to obtain consents or comply with conditions imposed by the Agency in accordance with this Part of this Schedule the Agency may serve written notice requiring Network Rail to cease all or any part of the specified works and Network Rail must cease the specified works or part of them until it has obtained the consent or complied with the condition unless the cessation of the specified works or part of them would cause greater damage than compliance with the written notice.

(5) 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.

(6) 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 this Order from doing so; and

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

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

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

(2) If by reason of—

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

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

(3) Subject to paragraph 23, if within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, Network Rail fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and may recover from Network Rail the expense reasonably incurred by it in doing so.

(4) Subject to paragraph 23, in any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from Network Rail the reasonable cost of so doing provided that notice specifying those steps is served on Network Rail as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice

23.—(1) Nothing in paragraphs 19(5), 20(3), 21, 22(3) and (4) authorises the Agency to execute works on or affecting an operational railway forming part of Network Rail's network without the prior consent in writing of Network Rail such consent not to be unreasonably withheld or delayed.

(2) Network Rail is deemed to have given its consent if it has not refused consent within 2 calendar months of receiving a written request by the Agency.

24. Network Rail 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;
- (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;
- (c) in the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

25.—(1) Without affecting the other provisions of this Part of this Schedule, Network Rail 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 development or any sewers, drains and watercourses;

- (d) any flooding or increased flooding of any such lands; or
- (e) inadequate water quality in any watercourse or other surface waters or in any groundwater,

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

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

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

27. Any dispute arising between Network Rail and the Agency under this Part of this Schedule, if the parties agree, is to be determined by arbitration under article 34 (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 Network Rail or the Agency, after notice in writing by one to the other.

PART 4

FOR THE PROTECTION OF HUTCHISON PORTS (UK) LIMITED AND THE FELIXSTOWE DOCK AND RAILWAY COMPANY

28.—(1) The following provisions apply for the protection of the Felixstowe operator, unless otherwise agreed in writing between Network Rail and the Felixstowe Dock and Railway Company.

(2) In this Part of this Schedule—

“access agreement” has the same meaning as section 83(1) (interpretation of Part 1) of the Railways Act 1993^(a);

“the Felixstowe operator” means Hutchison Ports (UK) Limited and the Felixstowe Dock and Railway Company; and

“Network Code” means the common set of rules and industry procedures, regulated by the Office of Rail Regulation, that apply to all parties who have a contractual right of access to the network owned and operated by Network Rail as having effect from time to time, and includes any document (whatever called) that replaces the Network Code.

29. At the same time as Network Rail consults persons with an access agreement in accordance with its obligations under Part D of the Network Code, Network Rail must consult the Felixstowe operator in writing about the timetable for Network Rail’s taking possession of the East Suffolk Line railway for the purposes of this Order.

30. At the same time as Network Rail consults persons with an access agreement in accordance with its obligations under Part G of the Network Code, Network Rail must consult the Felixstowe operator in writing about any proposal by Network Rail that will impose a speed restriction on the East Suffolk Line between East Suffolk Junction and Westerfield Junction.

31. As part of the consultation under paragraph 29 Network Rail must provide the Felixstowe operator with written particulars of the proposed timetable.

32. As part of the consultation under paragraph 30 Network Rail must provide the Felixstowe operator with written particulars of the proposed speed restriction.

(a) 1993 c. 43.

33. Each consultation with the Felixstowe operator under paragraph 29 or paragraph 30 must specify the latest date by which the Felixstowe operator is required to respond.

34. Network Rail must have regard to any response to the consultation from the Felixstowe operator which is received in writing on or before the date specified in accordance with paragraph 33, or such later date as may be agreed in writing between the parties.

35. For the purposes of this Part of this Schedule any written document sent by Network Rail to the Felixstowe operator under this Part of this Schedule is duly sent to both Hutchison Ports (UK) Limited and the Felixstowe Dock and Railway Company if it is addressed to either or both those companies at the registered office of either of those companies or such other address as either company may have specified to Network Rail.

PART 5

FOR THE PROTECTION OF NATIONAL HEALTH SERVICE BLOOD AND TRANSPLANT

36.—(1) The following provisions apply for the protection of NHSBT, unless otherwise agreed in writing between Network Rail and NHSBT.

(2) In this Part of this Schedule—

“NHSBT” means National Health Service Blood and Transplant acting in exercise of its statutory functions;

“NHSBT parking spaces” means 6 car parking spaces for the use of NHSBT during any period when, due to Network Rail’s exercise of the powers of this Order, NHSBT does not have the uninterrupted use of plot 58; and

“plot 58” means the land shown numbered 58 on the land plans.

(3) No works are to be commenced within plot 58 until—

(a) details of the provision for NHSBT parking spaces have been submitted to and approved by the relevant planning authority; and

(b) Network Rail has made the NHSBT parking spaces available to NHSBT in accordance with the approved details.

(4) Network Rail must continue to make the NHSBT parking spaces available to NHSBT for any period during which, due to Network Rail’s exercise of the powers of this Order, NHSBT does not have the uninterrupted use of plot 58.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Network Rail Infrastructure Limited (referred to in this Order as Network Rail) to construct, maintain and operate a new section of railway, 1415 metres long, to the north of Ipswich Goods Yard, linking the Great Eastern Main Line and East Suffolk Line Railways.

The purpose of the railway chord is to allow freight trains from the Port of Felixstowe to access the West Coast Main Line Railway by a more direct cross-country route from Felixstowe to Nuneaton instead of being routed via the Great Eastern Main Line and North London Line. This will provide increased freight capacity whilst reducing the conflict between freight and passenger traffic on busy commuter routes.

The Order would permit Network Rail to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

A copy of the plans and sections and the book of reference certified in accordance with article 32 of this Order (certification of plans etc.) may be inspected free of charge during working hours at

the offices of the Company Secretary and Solicitor to Network Rail Infrastructure Limited at Kings Place, 90 York Way, London N1 9AG.

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Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

Published by TSO (The Stationery Office) and available from:

Online

www.tsoshop.co.uk

Mail, Telephone, Fax & E-mail

TSO

PO Box 29, Norwich, NR3 1GN

Telephone orders/General enquiries: 0870 600 5522

Fax orders: 0870 600 5533

E-mail: customer.services@tso.co.uk

Textphone: 0870 240 3701

TSO@Blackwell and other Accredited Agents

ISBN 978-0-11-152868-6



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