
STATUTORY INSTRUMENTS

2014 No. 2027

TRANSPORT AND WORKS, ENGLAND
TRANSPORT, ENGLAND

The Network Rail (Huyton) Order 2014

Made - - - - *29th July 2014*

Coming into force - - *19th August 2014*

An application has been made to the Secretary of State in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006(1) for an Order under sections 1 and 5 of the Transport and Works Act 1992(2) (“the 1992 Act”).

Objections to that application have been withdrawn.

The Secretary of State has determined to make an Order giving effect to the proposals comprised in the application with modifications which in the opinion of the Secretary of State do not make any substantial change in the proposals.

Notice of the Secretary of State’s determination was published in the London Gazette on 22nd July 2014.

The Secretary of State, in exercise of the powers conferred by sections 1 and 5 of, and paragraphs 1 to 4, 7, 8, 10, 11 and 16 of Schedule 1 to, the 1992 Act, makes the following Order.

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Network Rail (Huyton) Order 2014 and comes into force on 19th August 2014.

Interpretation

2. (1) In this Order—

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- (1) S.I. 2006/1466, amended by S.I. 2010/439, S.I. 2011/556, S.I. 2011/2085, S.I. 2012/147, S.I. 2012/1658, S.I. 2012/2590 and S.I. 2013/755.
- (2) 1992 c. 42; section 1 was amended by the Planning Act 2008 (c. 29), Schedule 2, paragraphs 51 and 52; section 5 was amended by S.I. 2012/1659.

“the 1961 Act” means the Land Compensation Act 1961(3);
“the 1965 Act” means the Compulsory Purchase Act 1965(4);
“the 1980 Act” means the Highways Act 1980(5);
“the 1981 Act” means the Acquisition of Land Act 1981(6);
“the 1990 Act” means the Town and Country Planning Act 1990(7);
“the 1991 Act” means the New Roads and Street Works Act 1991(8);
“the 2003 Act” means the Communications Act 2003(9);
“address” includes any number or address used for the purposes of electronic transmission;
“authorised works” means the scheduled work and any other works authorised by this Order or any part of them;
“the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;
“building” includes any structure or erection or any part of a building, structure or erection;
“carriageway” has the same meaning as in the 1980 Act;
“the deposited plans” means the plans certified by the Secretary of State as the deposited plans for the purposes of this Order;
“the deposited section” means the section certified by the Secretary of State as the deposited section for the purposes of this Order;
“electronic transmission” means a communication transmitted—
(a) by means of an electronic communications network; or
(b) by other means but while in electronic form;
“footpath” and “footway” have the same meaning as in the 1980 Act;
“highway” and “highway authority” have the same meaning as in the 1980 Act;
“the limits of deviation” means the limits of deviation for the scheduled work shown on the deposited plans;
“the limits of land to be acquired or used” means the limits of land to be acquired or used shown on the deposited plans;
“maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace, and “maintenance” is to be construed accordingly;
“Network Rail” means Network Rail Infrastructure Limited (Company registration number 02904587) whose registered office is at Kings Place, 90 York Way, London, N1 9AG;
“the Order limits” means the limits of deviation and the limits of land to be acquired or used;
“owner”, in relation to land, has the same meaning as in the 1981 Act;
“the scheduled work” means the work specified in Schedule 1 (scheduled work) or any part of the work;
“street” includes part of a street;
“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

(3) 1961 c. 33.
(4) 1965 c. 56.
(5) 1980 c. 66.
(6) 1981 c. 67.
(7) 1990 c. 8.
(8) 1991 c. 22.
(9) 2003 c. 21.

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

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

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the air-space above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in Network Rail’s railway undertaking.

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

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

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

Incorporation of Railways Clauses Acts

3. (1) The following provisions of the Railways Clauses Consolidation Act 1845(**10**) are incorporated in this Order—

section 58(**11**) (company to repair roads used by them), except for the words from “and if any question” to the end;

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

section 68 (accommodation works by company);

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

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

section 75(**12**) (omission to fasten gates);

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

sections 78 to 85E(**13**) 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(**14**);

section 103(**15**) (refusal to quit carriage at destination);

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

section 145(**16**) (recovery of penalties).

(10) 1845 c. 20.

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

(12) Section 75 was amended by section 49 of the Transport and Works Act 1992 (c. 42).

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

(14) 1923 c. 20.

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

(16) Section 145 was amended by the Statute Law Revision Act 1892 (c. 19) and part 2 of Schedule 12 to the Transport Act 1962 (c. 46).

(2) Section 12 (signals, watchmen etc.) of the Railways Clauses Act 1863⁽¹⁷⁾ is incorporated in this Order.

(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 works;

“the special Act” means this Order; and

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

Application of the 1991 Act

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

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of that Act (which defines what highway authority works are major highway works); or
- (b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64⁽¹⁸⁾ of the 1980 Act (dual carriageways and roundabouts).

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

section 56 (directions as to timing);

section 56A (power to give directions as to placing of apparatus);

section 58 (restrictions following substantial road works);

section 73A (power to require undertaker to re-surface street);

section 73B (power to specify timing, etc., of re-surfacing);

section 73C (materials, workmanship and standard of re-surfacing);

section 78A (contributions to costs of re-surfacing by undertaker); and

Schedule 3A (restriction on works following substantial street works).

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

⁽¹⁷⁾ 1863 c. 92.

⁽¹⁸⁾ As amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(2) of, and Schedule 9 to, the New Roads and Street Works Act 1991 (c. 22).

- (4) The provisions of the 1991 Act⁽¹⁹⁾ referred to in paragraph (3) are—
section 54⁽²⁰⁾ (advance notice of certain works), subject to paragraph (5);
section 55⁽²¹⁾ (notice of starting date of works), subject to paragraph (5);
section 57⁽²²⁾ (notice of emergency works);
section 59⁽²³⁾ (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); and
section 77 (liability for cost of use of alternative route),

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

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

- (6) Nothing in article 11 (construction and maintenance of altered streets)—
(a) prejudices the operation of section 87 of the 1991 Act (prospectively maintainable highways), and Network Rail is not by reason of any duty under that article to maintain a street to be taken to be a street authority in relation to that street for the purposes of Part 3 of that Act; or
(b) has effect in relation to street works with regard to which the provisions of Part 3 of the 1991 Act apply.

PART 2

WORKS PROVISIONS

Principal powers

Power to construct and maintain works

5. (1) Network Rail may construct and maintain the scheduled work.

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

(3) Network Rail may, on the land specified in columns (1) and (2) of Schedule 2 (acquisition of certain lands for ancillary works), carry out and maintain any works specified in column (3) of that Schedule in relation to that land, with all necessary works and conveniences in connection with those works.

(4) Network Rail may, on the land specified in article 20(1) (cases where powers of acquisition limited to railway protection rights), carry out and maintain any works specified in relation to that land in article 20(5)(a) with all necessary works and conveniences in connection with those works.

(19) Sections 54, 55, 57, 60, 68 and 69 were amended by section 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).

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

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

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

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

(5) Subject to paragraph (7), Network Rail may carry out and maintain such of the following works as may be necessary or expedient for the purposes of, or for purposes ancillary to, the scheduled work, namely—

- (a) railway electrification, signalling and permanent way works;
- (b) buildings, yards, machinery, plant, apparatus and other works and conveniences;
- (c) approaches, ramps, passages, means of access, shafts and stagings;
- (d) embankments, aprons, abutments, retaining walls, wing walls, culverts;
- (e) works to alter or remove any structure erected upon any highway or adjoining land;
- (f) works to alter the position of apparatus, including mains, sewers, drains, cables and street furniture;
- (g) works to reconfigure the layout of the Huyton Bus Station in connection with the construction of the scheduled work;
- (h) landscaping and works to mitigate any adverse effects of the construction, maintenance or operation of the scheduled work; and
- (i) works for the benefit or protection of premises affected by the scheduled work.

(6) Subject to paragraph (7), Network Rail may carry out such other works (of whatever nature) as may be necessary or expedient for the purposes of, or for purposes ancillary to, the scheduled work, other than works that would interfere with a navigable watercourse.

(7) Paragraphs (5) and (6) only authorise the carrying out or maintenance of works outside the limits of deviation if such works are carried out on—

- (a) land specified in columns (1) and (2) of Schedule 2 for the purpose specified in relation to that land in column (3) of that Schedule; or
- (b) land specified in columns (1) and (2) of Schedule 6 (land of which temporary possession may be taken) for the purposes specified in column (3) of that Schedule.

Power to deviate

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

Streets

Power to execute street works

7. (1) Network Rail may, for the purposes of the authorised works, enter upon so much of any of the streets specified in Schedule 3 (streets subject to street works) as is within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it, or tunnel or bore under the street;
- (b) place apparatus in the street;
- (c) maintain apparatus in the street or change its position; and
- (d) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b) and (c).

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

Use of roads

8. (1) Regardless of any traffic regulations made under the Road Traffic Regulation Act 1984⁽²⁴⁾ or any other enactments Network Rail may use any road situated within the plot numbered 11 in the Metropolitan Borough of Knowsley for the passage of persons or vehicles (with or without materials, plant or machinery) for the purposes of or in connection with the construction of the authorised works.

(2) Any person having the management of a road to which paragraph (1) applies who suffers loss by reason of the exercise of the power conferred by that paragraph is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Temporary stopping up of streets

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

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

(2) Without limitation on the scope of paragraph (1), Network Rail may use any street stopped up under the powers conferred by this article 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 exercise of the powers conferred by this article if there would otherwise be no such access.

(4) Without limitation on the scope of paragraph (1), Network Rail may exercise the powers conferred by this article in relation to the street specified in columns (1) and (2) of Schedule 4 (street to be temporarily stopped up) to the extent specified, in column (3) of that Schedule.

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

- (a) in relation to any street specified as mentioned in paragraph (4) without first consulting the street authority; and
- (b) in relation to any other street without the consent of the street authority which may attach reasonable conditions to any consent, but such consent must not be unreasonably withheld.

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

(7) If within 28 days of receiving an application for consent under paragraph (5)(b) a 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.

Access to works

10. (1) Network Rail may, for the purposes of the authorised works with the approval of the highway authority, such approval not to be unreasonably withheld, form and lay out such means of access or improve existing means of access, at such locations within the Order limits as Network Rail reasonably requires for the purposes of the authorised works.

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

(24) 1984 c. 27

Construction and maintenance of altered streets

11. (1) Where a street is altered under this Order, the altered part of the street must, when completed to the reasonable satisfaction of the street authority unless otherwise agreed with the street authority, be maintained by and at the expense of Network Rail for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

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

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

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

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

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

Agreements with street authorities

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

- (a) any stopping up or alteration of a street under the powers conferred by this Order; or
- (b) the execution in the street of any of the works referred to in article 7(1) (power to execute street works).

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

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

Supplemental powers

Discharge of water

13. (1) Network Rail may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised works and for that

purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the exercise of the powers conferred by paragraph (1) to connect to or use a public sewer or drain is to be determined as if it were a dispute under section 106 of the Water Industry Act 1991⁽²⁵⁾.

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

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

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

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

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

(6) Network Rail must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) Nothing in this article obviates the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2010⁽²⁶⁾.

(8) If within 28 days of receiving an application for consent under paragraph (3), or an application for approval under paragraph (4)(a), a person to whom such application was made fails to notify Network Rail of their decision 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 watercourses, used both in this article and in the Water Resources Act 1991⁽²⁷⁾ have the same meaning as in that Act.

Protective works 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 Order limits as Network Rail considers to be necessary or expedient.

(2) Protective works may be carried out—

(a) at any time before or during the construction in the vicinity of the building of any part of the authorised works; or

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

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

⁽²⁵⁾ 1991 c. 56. Section 106 was amended by sections 35(8) and 43(2) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43), sections 36(2) and 99 of the Water Act 2003 (c. 37) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c. 29).

⁽²⁶⁾ S.I. 2010/675.

⁽²⁷⁾ 1991 c. 57.

(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 subparagraph (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 39 (arbitration).

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

(8) Where—

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

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

(9) Without affecting article 38 (no double recovery) nothing in this article relieves Network Rail from any liability to pay compensation under section 10(2) of the 1965 Act.

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

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

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

Power to survey and investigate land

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

- (a) survey or investigate any land shown within the Order limits;
 - (b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions as Network Rail thinks fit on the land to investigate the nature of the surface layer and subsoil and remove soil samples;
 - (c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land;
 - (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes; and
 - (e) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (d).
- (2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1), unless at least 7 days' notice has been served on every owner and occupier of the land.
- (3) Any person entering land under this article on behalf of Network Rail—
- (a) must, if so required, before or after entering the land produce written evidence of authority to do so; and
 - (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.
- (4) No trial holes are to be made under this article—
- (a) in a carriageway or footway without the consent of the highway authority; or
 - (b) in a private street without the consent of the street authority,
- but such consent must not be unreasonably withheld.
- (5) Network Rail must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.
- (6) Nothing in this article obviates the need to obtain scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979(28).
- (7) If within 14 days of receiving an application for consent under paragraph (4) a highway authority or street authority fails to notify Network Rail of its decision that authority is deemed to have granted consent.

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

- 16.** (1) Network Rail may acquire compulsorily—
- (a) so much of the land shown on the deposited plans within the limits of deviation as land to be acquired compulsorily and described in the book of reference as may be required for the purposes of the authorised works; and
 - (b) so much of the land specified in columns (1) and (2) of Schedule 2 (acquisition of certain lands for ancillary works) (being land shown on the deposited plans and described in the

book of reference) as may be required for the purpose specified in relation to that land in column (3) of that Schedule,

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

(2) This article is subject to article 21 (temporary use of land for construction of works).

Application of Part 1 of the 1965 Act

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

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

(2) Part 1 of the 1965 Act, as so applied, has effect as if section 4 (which provides a time limit for compulsory purchase of land) and paragraph 3(3) of Schedule 3 (which makes provision as to the giving of bonds) were omitted.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

18. (1) The Compulsory Purchase (Vesting Declarations) Act 1981⁽²⁹⁾ 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) substitute—

“(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)” substitute “(1)” and after “given” insert “and published”.

(5) In that section, for subsections (5) and (6) substitute—

“(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” insert “in a local newspaper circulating in the area in which the land is situated”; and
- (b) omit subsection (2).

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

(29) 1981 c. 66.

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 are construed as references to that Act as applied to the acquisition of land under article 16 (power to acquire land).

Power to acquire new rights

19. (1) Network Rail may acquire compulsorily such easements or other rights over any land which it is authorised to acquire under article 16 (power to acquire land) as may be required for any purpose for which that land may be acquired under that provision, by creating them as well as by acquiring easements or other rights already in existence.

(2) 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 or imposition of new rights)) where Network Rail acquires a right over land or the benefit of a restrictive covenant under paragraph (1) or article 20(6) Network Rail is not required to acquire a greater interest in that land.

(3) 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 or the imposition of a restrictive covenant under article 20(6).

Cases where powers of acquisition limited to railway protection rights

20. (1) This article applies to—

- (a) the plot numbered 4 in the Metropolitan Borough of Knowsley; and
- (b) the plot numbered 5 in the Metropolitan Borough of Knowsley.

(2) Network Rail's powers of compulsory acquisition under article 16 (power to acquire land) as respects the land referred to in paragraph (1)(a) are limited to the acquisition of railway protection rights over that land and the imposition of restrictive or other covenants under paragraph (6).

(3) Without affecting the powers included in article 16(1)(b) (power to acquire land) Network Rail may as respects the land referred to in paragraph 1(b) acquire railway protection rights over that land and impose restrictive or other covenants under paragraph (6).

(4) Where Network Rail acquires railway protection rights over land to which this article applies or imposes a covenant under paragraph (6) affecting the land, it is not required to acquire a greater interest in the land or any other interest in any part of it.

(5) In this article “railway protection rights” means—

- (a) rights to construct railway protection works on land or buildings on that land the purpose of which is to secure the safe operation of the authorised works or to prevent or minimise the risk of such operation being disrupted; and
- (b) rights to maintain such railway protection works referred to in sub-paragraph (a).

(6) In addition to acquiring railway protection rights over the land referred to in paragraphs 1(a) and 1(b), Network Rail may impose such restrictive or other covenants affecting the land as may be required for the purposes of—

- (a) maintaining or protecting the railway protection works referred to in paragraph (5)(a); and
- (b) securing the safe operation of the authorised works or to prevent or minimise the risk of such operation being disrupted.

Temporary Possession of Land

Temporary use of land for construction of works

- 21.** (1) Network Rail may, in connection with the carrying out of the authorised works—
- (a) enter upon and take temporary possession of—
 - (i) the land specified in columns (1) and (2) of Schedule 6 (land of which temporary possession may be taken) for the purposes specified in relation to that land in column (3) of that Schedule relating to the scheduled work specified in column (4) of that Schedule; and
 - (ii) any other land within the Order limits in respect of which no notice of entry has been served under section 11(30) (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981;
 - (b) remove any buildings and vegetation from that land;
 - (c) construct temporary works (including the provision of means of access) and buildings on that land; and
 - (d) construct any permanent works specified in relation to that land in column (3) of Schedule 6 or any other permanent mitigation works.
- (2) Not less than 14 days before entering upon and taking temporary possession of land under this article Network Rail must serve notice of the intended entry on the owners and occupiers of the land.
- (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 columns (1) and (2) of Schedule 6, after the end of the period of one year beginning with the date of completion of the scheduled work 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 the 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 Declarations) 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; or
 - (b) restore the land on which any works have been constructed under paragraph 1(d).
- (5) Network Rail must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise, in relation to the land, of the powers conferred by this article.
- (6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.
- (7) Without affecting article 38 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect

(30) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1) and S.I. 2009/1307.

of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5).

(8) The powers of compulsory acquisition of land conferred by this Order do not apply in relation to the land referred to in paragraph (1)(a)(i) except that Network Rail is not precluded, over any part of that land, from—

- (a) acquiring new rights under article 19 (power to acquire new rights); or
- (b) acquiring railway protection rights or imposing restrictive covenants under article 20 (cases where powers of acquisition limited to railway protection rights).

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

(10) Section 13(31) (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 17(1) (application of Part 1 of the 1965 Act).

Temporary use of land for maintenance of works

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

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

(2) Paragraph (1) does not authorise Network Rail to take temporary possession of—

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

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

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

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

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

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

(8) Without affecting article 38 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

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

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

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

(11) In this article “the maintenance period”, in relation to the scheduled work, means the period of 5 years beginning with the date on which the work is opened for use.

Compensation

Disregard of certain interests and improvements

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

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

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

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

Set-off for enhancement in value of retained land

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

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil), or the imposition of restrictive covenants, under this Order, the tribunal must set off against the value of the rights so acquired—

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

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

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

Supplementary

Acquisition of part of certain properties

25. (1) This article applies instead of section 8(1)(32) (other provisions as to divided land) of the 1965 Act (as applied by article 17 (application of Part 1 of the 1965 Act)) in any case where—

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

(32) Section 8 was amended by [S.I. 2009/1307](#).

(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 and stating 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 determine that the land subject to the notice to treat can be taken—

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

the owner is required to sell the land subject to the notice to treat.

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

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

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

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

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

the notice to treat is deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which 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 determine that—

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

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

(9) In any case where by virtue of a determination by the tribunal under this article a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, 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 the 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.

Extinction or suspension of private rights of way

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

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

whichever is the sooner.

(2) Subject to the provisions of this article in respect of land owned by Network Rail and required for the purposes of this Order all private rights of way are extinguished on the appropriation of the land for any of those purposes by Network Rail.

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

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

whichever is the sooner.

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

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

(6) This article does not apply in relation to any right of way to which section 271 or 272(33) of the 1990 Act (extinguishment of rights of statutory undertakers etc.) applies.

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

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

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

Time limit for exercise of powers of acquisition

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

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

(2) The powers conferred by article 21 (temporary use of land for construction of works) cease at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents Network Rail remaining in possession of land after the end of that period, if the land was entered and possession of it was taken before the end of that period.

PART 4

MISCELLANEOUS AND GENERAL

Defence to proceedings in respect of statutory nuisance

28. (1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990⁽³⁴⁾ (summary proceedings by person aggrieved by statutory nuisances) in relation to a nuisance falling within paragraph (g) of section 79(1)⁽³⁵⁾ of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance), no order is to be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows—

- (a) that the nuisance relates to premises used by Network Rail for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to authorised works and that the nuisance is attributable to the carrying out of authorised works which are being carried out in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61⁽³⁶⁾ (prior consent for work on construction sites) or 65⁽³⁷⁾ (noise exceeding registered level), of the Control of Pollution Act 1974⁽³⁸⁾; or
- (b) that the nuisance is a consequence of the operation of the authorised works and that it cannot reasonably be avoided.

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

⁽³⁴⁾ 1990 c. 43. Section 82 was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c. 40) and paragraph 6 of Schedule 17 to the Environment Act 1995 (c. 25).

⁽³⁵⁾ Section 79(1) was amended by section 2(2) of the Noise and Statutory Nuisance Act 1993, section 120 of, and paragraph 2(a) of Schedule 17 and paragraph 89(2) of Schedule 22 to, the Environment Act 1995, sections 101(2) and 102(2) of the Clean Neighbourhoods and Environment Act 2005 (c. 16) and sections 109(2), 110(2), 111(2) and 112(2)(a) of the Public Health etc. (Scotland) Act 2008 (asp. 5).

⁽³⁶⁾ Section 61 was amended by Schedule 7 to the Building Act 1984 (c. 55), paragraph 15(3) of Schedule 15 to the Environmental Protection Act 1990 (c. 43), Schedule 24 to the Environment Act 1995 and paragraph 10 of Schedule 6 to the Building (Scotland) Act 2003 (asp. 8).

⁽³⁷⁾ Section 65 was amended by paragraph 15(4) of Schedule 15 to the Environmental Protection Act 1990 and Schedule 24 to the Environment Act 1995.

⁽³⁸⁾ 1974 c. 40.

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

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

(3) The provisions of this article are without prejudice to the application to the authorised works of section 122 of the Railways Act 1993⁽³⁹⁾ (statutory authority as a defence to actions in nuisance, etc.) or any rule of common law having similar effect.

Planning permission

29. Planning permission which is deemed by a direction under section 90(2A)⁽⁴⁰⁾ (development with government authorisation) of the 1990 Act to be granted in relation to the authorised works is to be treated as specific planning permission for the purposes of section 264(3)(a) of that Act (cases in which land is to be treated as operational land for the purposes of that Act).

Power to lop trees overhanging the authorised works

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

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

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

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

Power to operate and use railway

31. (1) Network Rail may operate and use the railway and other authorised works as a system, or part of a system, of transport for the carriage of passengers and goods.

(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.

Obstruction of construction of authorised works

32. Any person who, without reasonable excuse—

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

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

⁽³⁹⁾ 1993 c. 43. As amended by the Transport Act 2000 (c. 38) and the Railways Act 2005 (c. 14).

⁽⁴⁰⁾ Section 90(2A) was inserted by section 16(1) of the Transport and Works Act 1992 (c. 42).

Disclosure of confidential information

33. A person who—

- (a) enters a factory, workshop or workplace under article 14 (protective works to buildings) or article 15 (power to survey and investigate land); and
- (b) discloses to any person any information obtained as a result of that entry and relating to any manufacturing process or trade secret,

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

Statutory undertakers etc.

34. The provisions of Schedule 7 (provisions relating to statutory undertakers etc.) have effect.

For the protection of operators of electronic communications code networks

35. The provisions of Schedule 8 (protection for operators of electronic communications code networks) have effect.

Certification of plans etc.

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

Service of notices

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

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

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

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978⁽⁴¹⁾ 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—

(41) 1978 c. 30.

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
 - (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.
- (5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is taken to be fulfilled where the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission either in writing or by electronic transmission.
- (6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.
- (7) Any consent to the use of electronic transmission given by a person may be revoked by that person in accordance with paragraph (8).
- (8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—
- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
 - (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.
- (9) This article does not exclude the employment of any method of service not expressly provided for by it.

No double recovery

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

Arbitration

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

Signed by authority of the Secretary of State

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

29th July 2014

SCHEDULES

SCHEDULE 1

Articles 2(1) and 5

SCHEDULED WORK

In the Metropolitan Borough of Knowsley—

Work No. 1 – A railway (230.9 metres in length) commencing at a point 36 metres south-east of the junction of Poplar Bank with Derby Road passing eastwards and terminating at a point 61 metres south of the junction of Huyton Hey Road with Huyton Church Road.

SCHEDULE 2

Articles 5 and 16

ACQUISITION OF CERTAIN LANDS FOR ANCILLARY WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Plot number</i>	<i>(3)</i> <i>Purpose for which land may be acquired</i>
Metropolitan Borough of Knowsley	3, 6, 9, 14	Provision of maintenance access
	4	Railway protection rights
	5	Provision of maintenance access and railway protection rights

SCHEDULE 3

Article 7

STREETS SUBJECT TO STREET WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Streets subject to street works</i>
Metropolitan Borough of Knowsley	Streets located within plot 9

SCHEDULE 4

Article 9

STREET TO BE TEMPORARILY STOPPED UP

(1)	(2)	(3)
<i>Area</i>	<i>Street to be temporarily stopped up</i>	<i>Extent of temporary stopping up</i>
Metropolitan Borough of Knowsley	Footway of Huyton Bus Station Access Road	Between points A and B

SCHEDULE 5

Article 19

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

Compensation enactments

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

2. (1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973⁽⁴²⁾ 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 “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable”.

(3) In section 58(1)⁽⁴³⁾ (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 “part” in paragraphs (a) and (b) substitute “a right over or restrictive covenant affecting land consisting”;
- (b) for “severance” substitute “acquisition of the right or restrictive covenant”;
- (c) for “part proposed” substitute “right or restrictive covenant proposed”; and
- (d) for “part is” substitute “right or restrictive covenant is”.

⁽⁴²⁾ 1973 c. 26.

⁽⁴³⁾ Section 58(1) was amended by section 16(3) of, and Schedule 5 to, the Compulsory Purchase (Vesting Declarations) Act 1981 (c. 66), section 4 of, and paragraph 29(1) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2009/1307.

Application of the 1965 Act

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

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

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

4. For section 7 of the 1965 Act (measure of compensation) substitute—

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

5. For section 8 of the 1965 Act (other provisions as to divided land) substitute—

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

- (a) a question of disputed compensation in respect of the purchase of the right 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 or the restrictive covenant imposed without material detriment to that land; or
 - (ii) where that land consists of such a park or garden, that the right cannot be purchased or the restrictive covenant imposed without seriously affecting the amenity or convenience of the house to which that land belongs,

the Network Rail (Huyton) Order 2014(44) (“the Order”) in relation to that person, ceases to authorise the purchase of the right or the imposition of the restrictive covenant and is deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is deemed to have been served in respect of that interest on such date as the tribunal directs.

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

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

7. Section 11(45) of the 1965 Act (powers of entry) is modified so as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right or restrictive covenant, it has power, exercisable in the equivalent circumstances and subject to the equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12(46) (penalty for unauthorised entry) and 13(47) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

8. Section 20(48) of the 1965 Act (protection for interests of tenants at will etc.) applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

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

(45) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1) and S.I. 2009/1307.

(46) Section 12 was amended by section 56(2) of, and part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).

(47) Section 13 was amended by sections 62(3), 139(4)-(9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(48) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 and S.I. 2009/1307.

SCHEDULE 6

Articles 5 and 21

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Plot number</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Authorised work</i>
Metropolitan Borough of Knowsley	3, 5, 6, 7, 13, 14	Access	Work No. 1
	4	Access and relocation and alteration of apparatus and equipment	Work No. 1
	9	Working site and access and reconfiguration works to Huyton Bus Station	Work No. 1
	15	Working site and access	Work No. 1

SCHEDULE 7

Article 34

PROVISIONS RELATING TO STATUTORY UNDERTAKERS ETC.

Apparatus of statutory undertakers etc. on land acquired

1. Sections 271 to 274(49) of the 1990 Act (power to extinguish rights of statutory undertakers etc. and power of statutory undertakers etc. to remove or re-site apparatus) apply in relation to any land acquired or appropriated by Network Rail under this Order subject to the following provisions of this paragraph; and all such other provisions of that Act as apply for the purposes of those provisions (including sections 275 to 278, which contain provisions consequential on the extinguishment of any rights under sections 271 and 272, and sections 279(2) to (4), 280 and 282(50), which provide for the payment of compensation) have effect accordingly.

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

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

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

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

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

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

is entitled to recover from 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 communicate with any other public sewer or with a private sewerage disposal plant.

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

6. In this Schedule—

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

“public utility undertakers” has the same meaning as in the 1980 Act⁽⁵¹⁾.

SCHEDULE 8

Article 35

PROTECTION FOR OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

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

(2) In this Schedule—

“BT” means British Telecommunications plc, Company No. 01800000, whose registered office is at 81 Newgate Street, London, EC1A 7AJ;

“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)⁽⁵²⁾ 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⁽⁵³⁾;

“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

⁽⁵¹⁾ As amended by section 190(3) of, and part 1 of Schedule 27 to, the Water Act 1989 (c. 15) and section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c. 29).

⁽⁵²⁾ Paragraph 1(3A) was inserted by paragraphs 1 and 4 of Schedule 3 to the Communications Act 2003.

⁽⁵³⁾ See section 106.

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

2. The temporary stopping up or diversion of any highway under article 9 (temporary stopping up of streets) does not affect any right of the operator under paragraph 9(54) of the electronic communications code to maintain any apparatus which, at the time of the stopping up or diversion, is in that highway.

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

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

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

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

(2) Sub-paragraph (1) does not apply to—

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

(3) 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.

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

4. Where any railway protection works are constructed by Network Rail under article 20 (cases where powers of acquisition limited to railway protection rights) on any land or buildings belonging to BT—

- (a) such railway protection works must be maintained by and at the expense of Network Rail for a period of 12 months from the completion of such railway protection works;
- (b) at the expiry of that 12 month period Network Rail must pay BT a capitalised sum representing the costs which may be expected to be reasonably incurred by BT in maintaining such railway protection works; and
- (c) subject to Network Rail making the payment under sub-paragraph (b) such railway protection works must be maintained by and at the expense of BT.

5. Any difference arising between Network Rail, an operator or BT under this Schedule must be referred to and settled by arbitration under article 39 (arbitration).

(54) Paragraph 9 was amended by paragraph 115 of part 4 of Schedule 8 to the New Roads and Street Works Act 1991 (c. 22), paragraphs 1 and 5(c) of Schedule 3 and paragraph 1 of Schedule 19 to the Communications Act 2003, S.I. 1993/3160 and S.I. 1995/3210.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Network Rail Infrastructure Limited to construct and operate a new section of railway and associated works at Huyton to facilitate an improvement in the capacity of the Chat Moss Line at Huyton east of Liverpool. The new section of railway will facilitate improved capacity for the operation of railway services between Manchester and Liverpool.

The Order authorises the acquisition of land and rights in land, and the use of land, for those purposes and confers powers in connection with the construction and operation of the railway.

Copies of the deposited plans, the deposited section and the book of reference referred to in the Order may be inspected at the offices of the Company Secretary and Solicitor to Network Rail Infrastructure Limited at Kings Place, 90 York Way, London, N1 9AG.