
STATUTORY INSTRUMENTS

2004 No. 757

TRANSPORT AND WORKS, ENGLAND
TRANSPORT, ENGLAND

**The Docklands Light Railway (Woolwich
Arsenal Extension) Order 2004**

Made - - - - *12th March 2004*
Coming into force - - *2nd April 2004*

Whereas 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 2000⁽¹⁾ made under sections 6, 6A, 7 and 10 of the Transport and Works Act 1992⁽²⁾ (“the 1992 Act”), for an Order under sections 1, 3 and 5 of the 1992 Act;

And whereas the Secretary of State caused an inquiry to be held for the purposes of the application pursuant to section 11 of the Act;

And whereas the Secretary of State, having considered the objections made and not withdrawn and the report of the person who held the inquiry, has determined to make an Order giving effect to the proposals comprised in the application with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

And whereas the Secretary of State is satisfied that the provision of an alternative right of way for each of the streets mentioned in Part 2 of Schedule 4 to this Order is not required;

And whereas notice of the Secretary of State’s determination was published in the London Gazette on 2nd March 2004;

Now, therefore, the Secretary of State, in exercise of the powers conferred on him by sections 1, 3 and 5 of, and paragraphs 1 to 4, 7, 8, 10, 11 and 15 to 17 of Schedule 1 to, the 1992 Act and of all other powers enabling him in that behalf, hereby makes the following Order:—

(1) S.I.2000/2190.
(2) 1992 c. 42.

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Docklands Light Railway (Woolwich Arsenal Extension) Order 2004 and shall come into force on 2nd April 2004.

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961⁽³⁾;

“the 1965 Act” means the Compulsory Purchase Act 1965⁽⁴⁾;

“the 1984 Act” means the Road Traffic Regulation Act 1984⁽⁵⁾;

“the 1990 Act” means the Town and Country Planning Act 1990⁽⁶⁾;

“the 1991 Act” means the New Roads and Street Works Act 1991⁽⁷⁾;

“the 1992 Act” means the Transport and Works Act 1992⁽⁸⁾;

“the Applications Rules” means the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2000⁽⁹⁾;

“the authorised railway” means the railways authorised by this Order or any part of them;

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

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

“carriageway” has the same meaning as in the Highways Act 1980⁽¹⁰⁾;

“the deposited plans” means the composite plans certified by the Secretary of State as the deposited plans for the purposes of this Order and references to land shown on those plans are references to land so shown in pursuance of rule 12(5) of the Application Rules;

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

“DLRL” means Docklands Light Railway Limited, a company limited by shares and registered in England and Wales under number 2052677;

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

“the limits of deviation” means the limits of lateral deviation for the scheduled works mentioned in article 5(1)(a);

“the limits of land for safeguarding works” means the limits so shown and described on the deposited plans;

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace and “maintenance” shall be construed accordingly;

(3) 1961 c. 33.

(4) 1965 c. 56.

(5) 1984 c. 27.

(6) 1990 c. 8.

(7) 1991 c. 22.

(8) 1992 c. 42.

(9) S.I. 2000/2190.

(10) 1980 c. 66.

“mooring” means any buoy, pile, pontoon, chain or other apparatus used for the mooring of vessels;

“occupier” means a person occupying land under a tenancy for a period of more than one month (not being a statutory tenant within the meaning of the Rent Act 1977⁽¹¹⁾ or the Rent Agriculture Act 1976)⁽¹²⁾;

“the open space and exchange land plan” means the plan so headed and attached to the deposited plans;

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

“owner”, in relation to land, means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple of land (whether in possession or reversion) and includes a person holding, or entitled to the rents and profits of, the land under a lease or tenancy having an unexpired term exceeding 3 years;

“parking place” has the same meaning as in section 32 of the 1984 Act;

“RoDMA” means the company registered by the name of the Royal Docks Management Authority Limited with the registered number 2363622 or any other person or body exercising functions under the London Docklands Development Corporation Act 1994⁽¹³⁾ as successor to RoDMA;

“the scheduled works” means the works specified in Schedule 1 to this Order or any part of them;

“street” includes part of a street;

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

“tidal work” means so much of any temporary authorised work as is in, on, over or under the River Thames or King George V Dock or involves cutting their banks and walls;

“the tribunal” means the Lands Tribunal; and

“the tunnels” means the tunnels under the River Thames forming part of Work No. 1.

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

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

(4) References in this Order to points identified by letters, with or without numbers, shall be construed as references to the points marked on the deposited plans.

(5) All distances, directions and lengths stated in the description of the scheduled works or in any description of powers or lands shall be construed as if the words “or thereabouts” were inserted after each such distance, direction and length, and distances between points on a scheduled work shall be taken to be measured along the scheduled work.

Application of 1991 Act

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

(11) 1977 c. 42. See section 2(1) and Schedule 1, as amended by the Housing Act 1980 (c. 51), sections 76 and 153(2) and Schedule 26, and the Housing Act 1988 (c. 50), section 39(1).

(12) 1976 c. 80. See section 4, as amended by the Rent Act 1977, section 155 and Schedule 23, and the Housing Act 1980, section 76(3).

(13) 1994 c. xiii.

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

(2) Section 56 (directions as to timing) and section 58 (restrictions following substantial road works) of the 1991 Act shall not apply in relation to any works executed under the power of this Order.

(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 shall apply (with the necessary modifications) in relation to the stopping up, alteration or diversion of a street by DLRL under the powers conferred by this Order whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

- (4) The provisions of the 1991 Act referred to in paragraph (3) are—
- section 54 (advance notice of certain works);
 - section 55 (notice of starting date of works);
 - 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 75 (inspection fees);
 - section 76 (liability for cost of temporary traffic regulation);
 - section 77 (liability for cost of use of alternative route); and

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

- (5) Nothing in article 13 of this Order shall—
- (a) prejudice the operation of section 87 of the 1991 Act (prospectively maintainable highways); and DLRL shall not by reason of any duty under that article to maintain a street be taken to be the street authority in relation to that street for the purposes of Part III of that Act; or
 - (b) have effect in relation to street works as respects which the provisions of Part III of the 1991 Act apply.

PART 2

WORKS PROVISIONS

Principal Powers

Power to construct works

- 4.—(1) DLRL may construct and maintain the scheduled works.

(2) Subject to article 5, the scheduled works may only be constructed in the lines or situations shown on the deposited plans and in accordance with the levels shown on the deposited sections.

(3) Subject to paragraph (6), DLRL may carry out and maintain such of the following works as may be necessary or expedient for the purposes of, in connection with or in consequence of, the construction of the scheduled works, namely—

- (a) works required for the strengthening, improvement, repair or reconstruction of any street;
- (b) works for the strengthening, alteration or demolition of any building or structure;
- (c) works to alter the position of any street furniture or apparatus, including mains, sewers, drains, cables and lights;
- (d) works to alter the course of, or otherwise interfere with, rivers, streams or watercourses;
- (e) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the other authorised works; and
- (f) facilities and works for the benefit or protection of land or premises affected by the other authorised works.

(4) Subject to paragraph (6), DLRL may carry out and maintain such other works (of whatever nature) as may be necessary or expedient for the purposes of, in connection with or in consequence of, the construction of the scheduled works.

(5) DLRL may remove any works constructed by it pursuant to this Order which have been constructed as temporary works or which it no longer requires.

(6) Paragraphs (3) and (4) shall only authorise the carrying out or maintenance of works—

- (a) within the limits of deviation for the scheduled works shown on the deposited plans;
- (b) on land specified in columns (1) and (2) of Schedule 2 to this Order for the purpose specified in relation to that land in column (3) of that Schedule (being land shown on the deposited plans as lying within the limits of additional land to be acquired or used); and
- (c) on land specified in columns (1) and (2) of Schedule 10 to this Order for the purpose specified in relation to that land in column (3) of that Schedule (being land shown on the deposited plans as lying within the limits of land to be used temporarily).

(7) In constructing and maintaining the scheduled works DLRL may lay and install such number of railway lines, switches and crossings as may be necessary or expedient.

(8) The following enactments shall not apply to anything done under or in pursuance of this Order—

- (a) sections 70 and 73 of the Port of London Act 1968⁽¹⁴⁾ (works not to be constructed, etc., without works licence and Licensing of dredging, etc.);
- (b) section 109 of the Water Resources Act 1991⁽¹⁵⁾, section 23 of the Land Drainage Act 1991⁽¹⁶⁾ and any byelaws made under those Acts; and
- (c) section 13 of the London Docklands Development Corporation Act 1994⁽¹⁷⁾.

(9) In exercising the powers of paragraph (3)(b) to demolish the building constructed on the land numbered 288 on the deposited plans, DLRL shall—

- (a) dismantle the Greens End façade of that building in such a manner as will enable it to be re-used elsewhere; and
- (b) thereafter securely store that dismantled façade until such time as the Council of the London Borough of Greenwich (or any person or body nominated by that council) requests

⁽¹⁴⁾ 1968 c. xxxii.

⁽¹⁵⁾ 1991 c. 57.

⁽¹⁶⁾ 1991 c. 59.

⁽¹⁷⁾ 1994 c. xiii.

DLRL to transfer the façade to it or to him, which DLRL shall do forthwith and for no charge;

but if no such request has been made within one year of completion of the station authorised by article 6 DLRL shall be relieved of its obligations under sub-paragraph (b) and may dispose of the façade.

Power to deviate

5.—(1) In constructing or maintaining any of the scheduled works, DLRL may—

- (a) deviate laterally from the lines or situations shown on the deposited plans within the limits of deviation relating to that work shown on those plans; and
- (b) deviate vertically from the levels shown on the deposited sections—
 - (i) to any extent not exceeding 5 metres upwards; and
 - (ii) to any extent downwards.

(2) Without prejudice to the generality of paragraph (1), in constructing or maintaining the scheduled works DLRL may, to the extent it thinks fit—

- (a) deviate from their points of commencement and termination shown on the deposited plans;
- (b) in relation to Work No.1, vary the commencement and termination point of any bored or cut and cover tunnel or any tunnel structure shown on the deposited plans, deviate from the design of any such tunnel or tunnel structure shown on the deposited sections and vary the number of tunnels and tunnel structures shown on those sections; and
- (c) in relation to any intended bridge, viaduct, aqueduct, gantry or other structure above ground level, deviate from the design shown on the deposited sections as it thinks fit, including by varying the number of any supporting columns or other structures, the distances between them and the height or clearance above the level of the ground.

Stations

6.—(1) DLRL may construct, maintain and operate a station on the specified lands, or on some of them, and DLRL may construct, maintain and operate all necessary works and conveniences connected with that station.

(2) In paragraph (1) “the specified lands” means the land in the London Borough of Greenwich numbered 249, 255a, 255b, 255c, 255d, 255e, 255f, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 273, 280, 281, 282, 283, 284, 285, 286, 287 and 288 on the deposited plans.

Streets

Power to alter layout of streets

7.—(1) DLRL may alter the layout of any street specified in columns (1) and (2) of Schedule 3 to this Order in the manner specified in relation to that street in column (3) of that Schedule.

(2) Without prejudice to the specific powers conferred by paragraph (1) but subject to paragraph (3), DLRL may for the purpose of constructing, maintaining or using any scheduled work, alter the layout of any street within the limits of deviation and the layout of any street having a junction with such a street; and, without prejudice to the generality of the foregoing, DLRL may—

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

(d) carry out works for the provision or alteration of parking places and bus laybys.

(3) The powers in paragraph (2) shall not be exercised without the consent of the street authority, but such consent shall not be unreasonably withheld.

Power to keep apparatus in streets

8.—(1) DLRL may, for the purposes of or in connection with the construction, maintenance and use of the authorised works, place and maintain in any street within the limits of deviation and in any street having a junction with such a street any work, equipment or apparatus including, without prejudice to the generality of the foregoing, foundations, road islands, substations, electric lines and any electrical or other apparatus,

(2) In this article—

- (a) “apparatus” has the same meaning as in Part III of the 1991 Act;
- (b) “electric line” has the meaning given by section 64(1) of the Electricity Act 1989⁽¹⁸⁾; and
- (c) the reference to any work, equipment, apparatus or other thing in a street includes a reference to any work, equipment, apparatus or other thing under, over, along or upon the street.

Power to execute street works

9. DLRL may, for the purpose of exercising the powers conferred by article 8 or any other provision of this Order, enter upon any street within the limits of deviation and any street having a junction with such a street and may execute any works required for or incidental to the exercise of those powers including, without prejudice to the generality of the foregoing, breaking up or opening the street, or any sewer, drain or tunnel under it, or tunnelling or boring under the street.

Stopping up of streets

10.—(1) Subject to the provisions of this article DLRL may, in connection with the construction of the authorised works, stop up each of the streets specified in columns (1) and (2) of Part 1 and Part 2 of Schedule 4 to this Order to the extent specified, by reference to the letters and numbers shown on the deposited plans, in column (3) of Parts 1 and 2 of that Schedule.

(2) No street specified in columns (1) and (2) of Part 1 of Schedule 4 to this Order (being a street to be stopped up for which a substitute is to be provided) shall be wholly or partly stopped up under this article unless either—

- (a) the new street to be substituted for it, and which is specified in relation to it by reference to one of the scheduled works mentioned in column (4) of that Part of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route is first provided and thereafter maintained by DLRL to the reasonable satisfaction of the street authority between the commencement and termination points of the street to be stopped up until completion of the new street in accordance with sub-paragraph (a).

(3) No street specified in columns (1) to (3) of Part 2 of Schedule 4 to this Order (being a street to be stopped up for which no substitute is to be provided) shall be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the relevant land; and for this purpose “relevant land” means any land which abuts on either side of the street to be stopped up.

(4) The condition referred to in paragraph (3) is that—

(18) 1989 c. 29.

- (a) DLRL is in possession of the land; or
 - (b) there is no right of access to the land from the street concerned; or
 - (c) there is reasonably convenient access to the land otherwise than from the street concerned; or
 - (d) the owners and occupiers of the land have agreed to the stopping up.
- (5) Where a street has been stopped up under this article—
- (a) all rights of way over or along it shall be extinguished; and
 - (b) DLRL may appropriate and use for the purposes of its undertaking so much of the site of the street as is bounded on both sides by land owned by DLRL.
- (6) Any person who suffers loss by the extinguishments or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part I of the 1961 Act.
- (7) This article is subject to paragraph 2 of Schedule 12 to this Order.

Temporary stopping up of streets

11.—(1) DLRL may, during and for the purposes of the execution of the authorised works 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 prejudice to the generality of paragraph (1), DLRL may use any street stopped up under the powers of this article as a temporary working site.

(3) DLRL shall provide at all times 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 prejudice to the generality of paragraph (1), DLRL may exercise the powers of this article in relation to the streets specified in columns (1) and (2) of Schedule 4 to this Order to the extent specified, by reference to the letters and numbers shown on the deposited plans and set out in column (3) of that Schedule, and in relation to the streets specified in Schedule 5 to this Order.

(5) DLRL shall not exercise the powers of 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, but such consent shall not be unreasonably withheld.

Access to works

12. DLRL may, for the purposes of the construction or operation of the scheduled works, form and lay out such means of access or improve such existing means of access, to streets within the limits of deviation, as may be approved by the highway authority, but such approval shall not be unreasonably withheld.

Construction and maintenance of new or altered streets

13.—(1) Any street to be constructed under this Order shall be completed to the reasonable satisfaction of the highway authority and shall, unless otherwise agreed, be maintained by and at the expense of DLRL for a period of 12 months from its completion and at the expiry of that period by and at the expense of the highway authority.

(2) Where a street is altered or diverted under this Order, the altered or diverted part of the street shall when completed to the reasonable satisfaction of the street authority, unless otherwise agreed, be maintained by and at the expense of DLRL 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.

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

Agreements with street authorities

- 14.**—(1) A street authority and DLRL may enter into agreements with respect to—
- (a) the construction of any new street (including any structure carrying the street over or under the authorised railway) under the powers conferred by this Order;
 - (b) the strengthening or improvement of any street under the powers conferred by this Order;
 - (c) the maintenance of any street or of the structure of any bridge or tunnel carrying a street over or under the authorised railway;
 - (d) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
 - (e) the execution in the street of any of the works referred to in article 9.
- (2) Such an agreement may, without prejudice to the generality of paragraph (1)—
- (a) provide 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.

The River Thames and King George V Dock

Works in the River and Dock

15.—(1) Without prejudice to the other powers conferred by this Order or otherwise available to it, DLRL may within the dock area and the river area for the purposes of or in connection with the construction, operation or maintenance of the authorised works and notwithstanding any interference thereby with any public or private rights—

- (a) alter, relocate or replace any work or structure;
- (b) carry out excavations and clearance, dredging, deepening, dumping and pumping operations;
- (c) use, appropriate and dispose of any materials (including liquids but excluding any wreck within the meaning of the Merchant Shipping Act 1995⁽¹⁹⁾) obtained by it in carrying out any such operations;
- (d) remove or relocate any mooring;
- (e) remove and relocate any vessel or structure sunk, stranded or abandoned or moored or left (whether lawfully or not);
- (f) temporarily moor or anchor vessels and structures and load and unload into and from such vessels or structures equipment, machinery, soil and any other materials in connection with the construction of the works;
- (g) temporarily remove, alter, strengthen, interfere with, occupy and use the banks, bed, foreshore, waters and walls of King George V Dock and the River Thames; and

(19) 1995 c. 21.

(h) construct, place and maintain temporary works and structures; in such manner and to such extent as may appear to it to be necessary or convenient.

(2) Except in the case of an emergency, DLRL will use its reasonable endeavours to notify the owner of any mooring and the owner or master of any vessel or structure affected by the proposal to exercise the powers of paragraph (1)(d) or (e) before the exercise of that power.

(3) In this article—

- (a) “the dock area” means so much of the bed, waters, banks and walls of King George V Dock as is comprised in the lands numbered 2 and 3 on the deposited plans in the London Borough of Newham; and
- (b) “the river area” means so much of the bed, waters, foreshore, banks and walls of the River Thames as is comprised in the lands numbered 92, 93 and 107 on the deposited plans in the London Borough of Greenwich.

Protection of the tunnels, etc.

16.—(1) A person may not without the consent in writing of DLRL (which may be given subject to conditions)—

- (a) use, for the purpose of landing or embarking persons or landing or loading goods from or into any vessel, any work constructed in connection with the tunnels or the other authorised works;
- (b) interfere with the tunnels or with any land within 3 meters of the tunnels (measured in any direction); or
- (c) remove, move or otherwise interfere with any work, machinery, apparatus, tools or other things in use or intended for use in constructing the tunnels or the other authorised works.

(2) A person who without reasonable excuse contravenes paragraph (1), or fails to comply with any conditions attached to a consent given by DLRL under that paragraph, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Supplemental

No apparatus in the tunnels without consent

17. Notwithstanding anything contained in any other enactment, no person shall enter upon, break up or interfere with the tunnels or any part thereof for the purpose of placing or doing anything in or in relation to any sewer, drain, main, pipe, wire or other apparatus or executing any work except with the written consent of DLRL and in accordance with such terms and conditions as DLRL may determine.

Discharge of water

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

(2) DLRL shall not discharge any water into any watercourse, public sewer or drain except with the consent of the authority to which it belongs; and such consent may be given subject to such terms and conditions as the authority may reasonably impose but shall not be unreasonably withheld.

(3) DLRL shall not make any opening into any public sewer or drain except in accordance with plans approved by, and under the superintendence (if provided) of, the authority to which the sewer or drain belongs, but such approval shall not be unreasonably withheld.

(4) DLRL shall 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.

(5) DLRL shall 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 or oil or matter in suspension.

(6) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991⁽²⁰⁾.

(7) 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, a local authority, or a harbour authority within the meaning of the Harbours Act 1964⁽²¹⁾;
- (b) “watercourse” includes King George V Dock and all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows, except a public sewer or drain; and
- (c) other expressions used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

Safeguarding works to buildings

19.—(1) Subject to the following provisions of this article, DLRL may at its own expense and from time to time carry out such safeguarding works to any building lying within the limits of deviation or the limits of land for safeguarding works as DLRL considers to be necessary or expedient.

(2) Safeguarding 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, 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 DLRL may enter and survey any building falling within paragraph (1) and any land belonging to it.

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

- (a) enter the building and any land belonging to it; and
- (b) where the works cannot be carried out reasonably conveniently without entering land adjacent to the building, enter the adjacent land.

(5) Before exercising—

- (a) a right under paragraph (1) to carry out safeguarding works to a building;
- (b) a right under paragraph (3) to enter a building;
- (c) a right under paragraph (4)(a) to enter a building or land; or

⁽²⁰⁾ 1991 c. 57.

⁽²¹⁾ 1964 c. 40.

(d) a right under paragraph (4)(b) to enter land;

DLRL shall, 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 safeguarding works proposed to be carried out.

(6) Where 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 safeguarding works or to enter the building or land to be referred to arbitration under article 55.

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

(8) Where—

- (a) safeguarding 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 within the vicinity of the building is first opened for use, it appears that the safeguarding works are inadequate to protect the building against damage caused by the construction or operation of that part of the works;

DLRL shall compensate the owners and occupiers of the building for any damage sustained by them.

(9) Without prejudice to article 54, nothing in this article shall relieve DLRL from any liability to pay compensation under section 10(2) of the 1965 Act.

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

(11) In this article—

- (a) “building” includes any structure or erection or any part of a building, structure or erection; and
- (b) “safeguarding works”, in relation to a building, means—
 - (i) 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;
 - (ii) 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
 - (iii) 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.

(12) The powers of this article may not be exercised in relation to the land lying within the limits of deviation that is specified in Schedule 6 to this Order.

Town and country planning

20.—(1) In relation to the application of paragraph (3)(c) of the Second Schedule of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Tree Preservation Order) Regulations 1969⁽²²⁾ (including that paragraph as applied by regulation 3(ii) of the Town and Country Planning (Tree Preservation Order) (Amendment) and (Trees in Conservation Areas) (Exempted Cases) Regulations 1975⁽²³⁾, or as incorporated in any tree preservation order), any

⁽²²⁾ S.I. 1969/17.

⁽²³⁾ S.I. 1975/148.

direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to works authorised by this Order shall be treated as deeming the permission to have been granted on application made under Part III of that Act for the purposes of that Part.

(2) In relation to the application of article 5(1)(d) of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Trees) Regulations 1999(24) as incorporated in any tree preservation order or as having effect by virtue of regulation 10(1)(a) of those Regulations, any direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to the works authorised by this Order shall not be treated as an outline planning permission.

(3) Planning permission which is deemed by a direction under section 90(2A) of the 1990 Act to be granted in relation to works authorised by this Order shall 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 survey and investigate land, etc.

21.—(1) DLRL may for the purposes of this Order—

- (a) survey or investigate any land within the Order limits and any land specified in columns (1) and (2) of Schedule 10 to this Order;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions as DLRL thinks fit on the land to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out archaeological investigations on any such land;
- (d) place on, leave on and remove from the land apparatus for use in connection with the exercise of any of the powers conferred by sub-paragraphs (a) to (c); and
- (e) enter on the land for the purpose of exercising any of 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 DLRL—

- (a) shall, if so required, before or after entering the land produce written evidence of his authority to do so; and
- (b) may take with him such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes shall be made under this article in a carriageway or footway without the consent of the street authority, but such consent shall not be unreasonably withheld.

(5) DLRL shall make compensation for any damage occasioned, by the exercise of the powers conferred by this article, to the owners and occupiers of the land, such compensation to be determined, in case of dispute, under Part I of the 1961 Act.

(6) The powers of this article may not be exercised in relation to the land lying within the limits of deviation that is specified in Schedule 7 to this Order.

Obstruction of construction of authorised works

22. Any person who, without reasonable excuse, obstructs another person from constructing any of the authorised works under the powers conferred by this Order shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(24) S.I. 1999/1892.

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

23.—(1) DLRL may acquire compulsorily—

- (a) so much of the land shown on the deposited plans within the limits of deviation for the scheduled works shown on those plans and described in the book of reference as may be required for or in connection with the authorised works; and
- (b) so much of the land specified in columns (1) and (2) of Schedule 2 to this Order (being land shown on the deposited plans and described in the book of reference as lying within the limits of additional land to be acquired or used) 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 connected with, or ancillary to, its undertaking.

(2) This article is subject to article 28 and 29(2).

(3) DLRL may not acquire compulsorily the lands numbered 255c, 255e and 256 on the deposited plans or any part of them.

Application of Part I of the Compulsory Purchase Act 1965

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

- (a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981⁽²⁵⁾ applies; and
- (b) as if this Order were a compulsory purchase order under that Act.

(2) Part I of the 1965 Act, as so applied, shall have 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

25.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981⁽²⁶⁾ shall apply to DLRL as if this Order were a compulsory purchase order.

(2) In its application by virtue of paragraph (1), the Compulsory Purchase (Vesting Declarations) Act 1981 shall have effect with the following modifications.

(3) In section 3 (preliminary notices) for subsection (1) there shall be substituted—

“(1) Before making a declaration under section 4 below with respect to any land which is subject to a compulsory purchase order the acquiring authority shall include the particulars specified in subsection (3) below 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

⁽²⁵⁾ 1981 c. 67.

⁽²⁶⁾ 1981 c. 66.

(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 shall be substituted “(1)” and after “given” there shall be inserted “and published”.

(5) In that section, subsections (5) and (6) shall be omitted and at the end there shall be substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) he is for the time being entitled to dispose of the fee simple of the land, whether in possession or reversion; or
- (b) he 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 shall be inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) shall be 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)” shall be omitted.

(8) References to the 1965 Act shall be construed as references to that Act as applied to the acquisition of land under article 24.

Powers to acquire new rights

26.—(1) DLRL may compulsorily acquire such easements or other rights over any land referred to in paragraph (1)(a) or (b) of article 23 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 8 to this Order), where DLRL acquires a right over land under paragraph (1) it shall not be required to acquire a greater interest in that land.

(3) Schedule 8 to this Order shall have effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article or article 28 of a right over land by the creation of a new right.

Powers to acquire subsoil only

27.—(1) DLRL may compulsorily acquire so much of the subsoil of the land referred to in paragraph (1)(a) or (b) of article 23 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 DLRL acquires any part of the subsoil of land under paragraph (1) DLRL shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) shall not prevent article 34 from applying where DLRL acquires a cellar, vault, arch or other construction forming part of a house, building or factory.

Subsoil or new rights only to be acquired under or in certain lands

28.—(1) This article applies to the land specified in Schedule 9 to this Order.

(2) In the case of the land specified in Part 1 of Schedule 9, subject to paragraph (4) DLRL’s powers of compulsory acquisition under article 23(1)(a) shall be limited to the acquisition of, or of

such easements or other new rights in, so much of the subsoil of the land as it may require for or in connection with the authorised works.

(3) Where DLRL acquires any part of, or easements or other new rights in, the subsoil of land specified in Part 1 of Schedule 9, it shall not be required to acquire a greater interest in the land or an interest in any other part of it.

(4) In the case of the land specified in Part 2 of Schedule 9, subject to paragraph (2) DLRL's powers of compulsory acquisition under article 23(1)(a) shall be limited to the acquisition of such easements or other new rights in the land as it may require for the purposes of constructing, maintaining, protecting, renewing and using the authorised works.

(5) Where DLRL acquires easements or other new rights in the land specified in Part 2 of Schedule 9, article 26(2) shall apply as it applies to the acquisition of a new right under that article.

(6) References in this article to the subsoil of land are references to the subsoil lying more than 5 metres beneath the level of the surface of the land or, in the case of Works Nos. 19A and 19B and any necessary works and conveniences connected therewith, lying more than 4 metres beneath the level of the surface of the land; and for this purpose “the level of the surface of the land” means—

- (a) in the case of any land on which a building is erected, the level of the surface of the ground adjoining the building;
- (b) in the case of a river, dock, canal, navigation, watercourse or other water area, the level of the surface of the ground nearest to it which is at all times above water level; or
- (c) in any other case, ground surface level.

Rights under or over streets

29.—(1) DLRL may enter upon and appropriate so much of the surface, subsoil of, or airspace over, any street shown on the deposited plans and described in the book of reference as may be required for the purposes of the authorised works and may use the surface, subsoil and air-space for those purposes or any other purpose connected with or ancillary to its undertaking.

(2) The power under paragraph (1) may be exercised in relation to a street without DLRL being required to acquire any part of the street or any easement or right in the street and except in relation to a street which is subject to stopping up pursuant to article 10, the powers of compulsory acquisition of land conferred by this Order shall not apply in relation to the street.

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

(4) Paragraph (2) shall not apply in relation to—

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

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

Temporary possession of land

Temporary use of land for construction of works

30.—(1) DLRL 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 10 to this Order and shown on the deposited plans as within the limits of land to be used temporarily, for the purpose specified in relation to that land in column (3) of that Schedule relating to the authorised works (or any of those works) so specified in column (4) of that Schedule; and
 - (ii) any of the land within the Order limits, except the land at surface level mentioned in Schedule 11 to this Order, in respect of which no notice of entry has been served under section 11 of the 1965 Act or 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; and
- (c) construct temporary works (including the provision of means of access) and buildings on the land.

(2) DLRL may, in connection with the carrying out of the authorised works, temporarily use the dock and may give reasonable directions to RoDMA and to any officer, employee, servant or agent of RoDMA with regard to operation of the dock and the bridge for the purposes of DLRL's exercise of the powers of this paragraph, paragraph (1) and article 15.

(3) Subject to paragraph (4), not less than 14 days before exercising the powers of paragraphs (1) or (2) DLRL shall serve notice of the intended entry or use on the owners and occupiers of the land in the case of paragraph (1) and on RoDMA in the case of paragraph (2).

(4) DLRL shall, except in an emergency, give RoDMA 24 hours' notice of any direction proposed to be given by DLRL under paragraph (2) and RoDMA shall comply with such a direction unless it has a reasonable excuse not to do so.

(5) DLRL may not, without the agreement of the owners of the land in the case of paragraph (1), or RoDMA in the case of paragraph (2), remain in possession of any land of which temporary possession has been taken or use has been made under this article—

- (a) in the case of land specified in columns (1) and (2) of Schedule 10 to this Order, after the end of the period of 2 years beginning with the date of completion of the work or works specified in relation to that land in column (4) of that Schedule;
- (b) in the case of land within the Order limits, after the end of the period of 2 years beginning with the date of completion of the work or works for which temporary possession of the land was taken unless DLRL has, by 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 in relation to that land; or
- (c) in the case of the dock, after DLRL has vacated the adjacent land specified in Schedule 10 to this Order and numbered 2 on the deposited plans in the London Borough of Newham, pursuant to sub-paragraph (a).

(6) Before giving up possession of land of which temporary possession has been taken under paragraph (1), DLRL shall remove all temporary works above a level 1 metre below the surface of the ground and restore the land above that level to the reasonable satisfaction of the owners of the land; but DLRL shall not be required to replace a building removed under this article.

(7) DLRL shall pay compensation to the owners and occupiers of land of which temporary possession is taken under paragraph (1) or (2), for any loss or damage arising from the exercise in relation to the land of the powers conferred by paragraphs (1), (2) and (6).

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

(9) Without prejudice to article 54, nothing in this article shall affect 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 (7).

(10) Where DLRL takes possession of or uses any land under this article, it shall not be required to acquire the land or any interest in it.

(11) In this article and article 31 “building” includes structure or any other erection.

(12) In this article—

“the bridge” means the bascule bridge carrying the A117 Woolwich Manor Way over the eastern end of King George V Dock; and

“the dock” means so much of King George V Dock, the lock and lock gates leading to and from the River Thames, the two jetties on either side of the riverward entrance to the lock and the associated roads, works, lands and buildings as are comprised in the lands numbered 1, 4, 5, 6, 7, 8, 9, 10 and 11 on the deposited plans in the London Borough of Newham.

(13) This article is without prejudice to the provisions of article 15.

(14) Section 13 of the 1965 Act shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 24(1).

Temporary use of land for maintenance of works

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

(a) enter upon and take temporary possession of any land within the limits of deviation and lying within 20 metres from that work, except the land at surface level mentioned in Schedule 11 to this Order, if such possession is reasonably required for the purpose of, or in connection with, maintaining the work or any ancillary works connected with it or securing the safe operation of any such work; and

(b) construct such temporary works (including the provision of means of access) and building on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) shall not authorise DLRL 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 DLRL shall serve notice of the intended entry on the owners and occupiers of the land.

(4) DLRL may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance 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, DLRL shall remove all temporary works above a level 1 metre below the surface of the ground and restore the land above that level to the reasonable satisfaction of the owners of the land.

(6) DLRL shall 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, shall be determined under Part I of the 1961 Act.

(8) Without prejudice to article 54, nothing in this article shall affect 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 DLRL takes possession of land under this article, it shall not be required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 24(1).

(11) In this article—

- (a) “the maintenance period”, in relation to a scheduled work, means the period of 5 years beginning with the date on which the work is opened for public use; and
- (b) any reference to land within a specified distance of a work includes, in the case of a work under the surface of the ground, a reference to land within the specified distance of the point on the surface below which the work is situated.

Market traders

32.—(1) Where DLRL considers that the carrying on by the holder of a public markets licence of the trading permitted by that licence would prevent or render less convenient the exercise of the powers of article 30 or 31, or the construction of the authorised works, DLRL may—

- (a) revoke that licence; or
- (b) with the consent of the Council, vary its principal or subsidiary terms.

(2) DLRL shall serve written notice of any such revocation or variation on the licence-holder in question not less than 28 days before the revocation or variation is to take effect.

(3) Where DLRL revokes a public markets licence under this article, the Council may remit or refund, as it considers appropriate, the whole or a part of any fee paid for the grant or renewal of the licence.

(4) DLRL shall pay compensation to any person who suffers any loss or damage from the exercise of the powers conferred by paragraph (1).

(5) Any dispute as to a person’s entitlement to compensation under paragraph (4), or as to the amount of the compensation, shall be determined under Part I of the 1961 Act.

(6) In this article—

- “the Council” means the Council of the London Borough of Greenwich; and
- “public markets licence” means a licence to trade at Beresford Market granted to any person by the Council pursuant to its rights under section 4 of the Woolwich Borough Council Act 1903(27) or any other enactment.

Compensation

Disregard of certain interests and improvements

33.—(1) In assessing the compensation (if any) payable to any person on the acquisition from him of any land under this Order, the tribunal shall 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.

(27) 1903 c. clxxvii (3 Edw.7).

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

Supplementary

Acquisition of part of certain properties

34.—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 24) 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 factory 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 DLRL a counter-notice objecting to the sale of the land subject to the notice to treat and stating that he 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 shall be required to 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 shall be required to sell only the land subject to the notice to treat shall, unless DLRL agrees to take the land subject to the counter-notice, be referred to the tribunal.

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

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

the owner shall be 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 shall be 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 shall be 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 DLRL is authorised to acquire compulsorily under this Order.

(8) If DLRL 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 shall be 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 DLRL 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, DLRL may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, if it does so, shall pay to the owner compensation for any loss or expense occasioned to him 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 factory or of land consisting of a house with a park or garden, DLRL shall pay him compensation for any loss sustained by him due to the severance of that part in addition to the value of the interest acquired.

Extinction or suspension of private rights of way

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

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

whichever is sooner.

(2) Subject to the provisions of this article, all private rights of way over land owned by DLRL which is within the limits of land which may be acquired shown on the deposited plans and is required for the purposes of this Order, shall be extinguished on the appropriation of the land for any of those purposes by DLRL.

(3) Subject to the provisions of this article, all private rights of way over land of which DLRL takes temporary possession under this Order shall be suspended and unenforceable for as long as DLRL remains in lawful possession of the land.

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

(5) This article does not apply in relation to any right of way to which section 271 of 272 of the 1990 Act (extinguishment of rights of statutory undertakers, etc.) or paragraph 2 of Schedule 12 to this Order applies.

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

- (a) any notice given by DLRL before the completion of the acquisition of the land, DLRL's appropriation of it, DLRL's entry onto it or DLRL's taking temporary possession of it, as the case may be, that any or all of those paragraphs shall 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) between DLRL and the person in or to whom the right of way in question is vested or belongs.

(7) If any such agreement as is referred to in paragraph (6)(b) which is made with a person in or to whom the right of way is vested or belongs is expressed to have effect also for the benefit of

those deriving title from or under him, it shall be effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

Open space

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

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

(3) DLRL shall lay out as replacement open space before the authorised works are first brought into public use so much of the replacement land of which possession has been taken under paragraph (1).

(4) As soon as the Council of the London Borough of Greenwich has certified that the land referred to in paragraph (3) has been laid out to its reasonable satisfaction that land shall vest in the London Development Agency subject to the like rights, trusts and incidents as attached to so much of the existing open space of which possession has been taken under paragraph (1).

(5) In this article—

- (a) “the existing open space” means the open space comprised in the land in the London Borough of Greenwich numbered 98 on the deposited plans and coloured red on the open space and exchange land plan; and
- (b) “the replacement land” means the land in the London Borough of Greenwich numbered 95, 96, 99, 100 and 108 on the deposited plans and coloured green on the open space and exchange land plan.

Time limit for exercise of powers of acquisition

37.—(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 shall be served under Part I of the 1965 Act, as applied to the acquisition of land under article 24; and
- (b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981, as applied by article 25.

(2) The power conferred by article 30 to enter upon and take temporary possession of land shall cease at the end of the period mentioned in paragraph (1); but this paragraph shall not prevent DLRL from remaining in possession of land in accordance with article 30 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

OPERATION OF AUTHORISED WORKS

Maintenance of approved works, etc.

38.—(1) Where pursuant to regulations(28) made under section 41 of the 1992 Act (approval of works, plant and equipment) approval has been obtained from the Health and Safety Executive with

(28) See S.I. 1994/157.

respect to any works, plant or equipment (including vehicles) forming part of the authorised works, such works, plant and equipment shall not be used in a state or condition other than that in which they were at the time that the approval was given unless any change thereto does not materially impair the safe operation of the authorised works.

(2) If without reasonable cause the provisions of paragraph (1) are contravened, DLRL shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) No proceedings shall be instituted in England and Wales in respect of an offence under this article except by or with the consent of the Health and Safety Executive or the Director of Public Prosecutions.

Power to lop trees overhanging authorised works

39.—(1) DLRL 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 for the purposes of the authorised works; or
- (b) from constituting a danger to passengers or other persons using the authorised works.

(2) In exercising the powers in paragraph (1), DLRL shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from the exercise of those powers.

(3) Nothing in this article shall be taken to affect the application of any tree preservation order made under section 198 of the 1990 Act.

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

Trespass on authorised railway

40.—(1) Any person who—

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

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

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

PART 5

PROTECTIVE PROVISIONS

Statutory undertakers, etc.

41. The provisions of Schedule 12 to this Order shall have effect.

For protection of railway interests

42. The provisions of Schedule 13 to this Order shall have effect.

For protection of the London Boroughs of Newham and Greenwich

43. The provisions of Schedule 14 to this Order shall have effect.

For protection of the Environment Agency

44. The provisions of Schedule 15 to this Order shall have effect.

For protection of specified undertakers

45. The provisions of Schedule 16 to this Order shall have effect.

For protection of navigation interests

46. The provisions of Schedule 17 to this Order shall have effect.

PART 6

MISCELLANEOUS AND GENERAL

Traffic regulation

47.—(1) Subject to the provisions of this article, DLRL may, for the purposes of the authorised works, at any time prior to the expiry of 12 months from the opening of the authorised railway for use and with the consent of the traffic authority in whose area the road is situated—

- (a) prohibit the waiting of vehicles at any time on the road specified in column (1) and along the lengths and between the points specified in columns (2) and (3) of Schedule 18 to this Order; and
- (b) revoke any traffic regulation order in so far as it is inconsistent with any prohibition made by DLRL under this paragraph.

(2) DLRL shall not exercise the powers of this article unless it has—

- (a) given not less than 12 weeks' notice in writing of its intention so to do to the chief officer of police and to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may within 28 days of its receipt of notice of DLRL's intention specify in writing.

(3) Any prohibition or other provision made by DLRL under sub-paragraph (1)(a) or (b) shall have effect as if duly made by the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act and the instrument by which it is effected may specify savings (in addition to those mentioned in Schedule 18) to which the prohibition is subject.

Powers of disposal, agreements for operation, etc.

48.—(1) DLRL may, with the consent of the Secretary of State sell, lease, charge or otherwise dispose of, on such terms and conditions as it thinks fit, the whole or any part of the authorised works and any land held in connection therewith.

(2) Without prejudice to the generality of paragraph (1), DLRL may enter into and carry into effect agreements with respect to any of the following matters, namely, the construction maintenance,

use and operation of the authorised works, or any part or parts of them, by any other person, and other matters incidental or subsidiary thereto or consequential thereon, and the defraying of, or the making of contributions towards, the cost of the matters aforesaid by DLRL or any other person.

(3) Any agreement under subsection (2) may provide (inter alia) for the exercise of the powers of DLRL in respect of the authorised works or any part or parts thereof, and for the transfer to any person of the authorised works or any part or parts thereof together with the rights and obligations of DLRL in relation thereto.

(4) The exercise of the powers of any enactment by any person in pursuance of any sale, lease, charge or disposal under paragraph (1), or any agreement under paragraph (2), shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those powers were exercised by DLRL.

(5) Sections 163 and 207(2) of the Greater London Authority Act 1999⁽²⁹⁾ shall not apply to the disposal of any freehold interest in land or the grant of a leasehold interest in land where consent for such disposal or grant is required under paragraph (1).

Application of landlord and tenant law

49.—(1) This article applies to any agreement for leasing to any person the whole or any part of the authorised works or the right to operate the same, and any agreement entered into by DLRL with any person for the construction, maintenance, use or operation of the authorised works, or any part of them, so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants shall prejudice the operation of any agreement to which this article applies.

(3) Accordingly no such enactment or rule of law shall apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Defence to proceedings in respect of statutory nuisance

50.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990⁽³⁰⁾ (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 shall 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 DLRL for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works and that the nuisance is attributable to the carrying out of works which are being carried out in accordance with a notice served under section 60, or a consent given under section 61 or 65, of the Control of Pollution Act 1974⁽³¹⁾; or

⁽²⁹⁾ 1999 c. 29.

⁽³⁰⁾ 1990 c. 43.

⁽³¹⁾ 1974 c. 40.

- (b) that the nuisance is a consequence of the operation of the works authorised by this Order and that it cannot reasonably be avoided.
- (2) The following provisions of the Control of Pollution Act 1974, namely—
 - (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);

shall not apply where the consent relates to the use of premises by DLRL 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⁽³²⁾ (statutory authority as a defence to actions in nuisance, etc.) or any rule of common law having similar effect.

Disclosure of confidential information

- 51.** A person who—
- (a) enters a factory, workshop or workplace in pursuance of the provisions of article 19 or article 21; and
 - (b) discloses to any person any information obtained by him relating to any manufacturing process or trade secret;

shall be 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 performing his duty in connection with the purposes for which he was authorised to enter the land.

Certification of plans, etc.

52. DLRL shall, as soon as practicable after the making of this Order, submit copies of the book of reference, the deposited plans, the deposited sections and the open space and exchange land plan to the Secretary of State for certification that they are true copies of, respectively, the book of reference, the deposited plans, the deposited sections and the open space and exchange land plan referred to in this Order, and a document so certified shall be admissible in any proceedings, as evidence of the contents of the document of which it is a copy.

Service of notices

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

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

(3) For the purposes of section 7 of the Interpretation Act 1978⁽³³⁾ as it applies for the purposes of this article, the proper address of any person in relation to the service on him of a notice or document under paragraph (1) is, if he 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

⁽³²⁾ 1993 c. 43.

⁽³³⁾ 1978 c. 30.

(b) in any other case, his last known address 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 his name or address cannot be ascertained after reasonable enquiry, the notice may be served by—

(a) addressing it to him 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) This article shall not be taken to exclude the employment of any method of service not expressly provided for by it.

No double recovery

54. Compensation shall not be payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law, or under two or more different provisions of this Order.

Arbitration

55. Unless otherwise agreed between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) shall 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 notice in writing to the other) by the President of the Institution of Civil Engineers.

Signed by authority of the Secretary of State

Ellis Harvey
Head of the Transport and Works Act Orders
Unit,
Department for Transport

12th March 2004

Status: This is the original version (as it was originally made).

SCHEDULES

SCHEDULE 1

Articles 2(1) and 4

SCHEDULED WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of Work</i>	<i>(3)</i> <i>Description of work</i>
In the London Boroughs of Newham and Greenwich	Work No. 1	A railway (2,533 metres in length), mainly located in two parallel bored tunnel structures, commencing at a junction with the proposed DLR Silvertown and London City Airport Extension at the centre of the proposed King George V station, passing eastwards and descending, then passing south-eastwards below Woodman Street, the junction of Albert Road, Woodman Street and Bargehouse Road, Grimsby Grove, and the River Thames, then turning southwards and rising, passing below Tom Cribb Road, then turning south-westwards and continuing to rise, passing under Plumstead Road and Maxey Road, then turning westwards under Burrage Road, Parry Place, the British Telecom access road and car park and the Network Rail Woolwich Arsenal station down passenger platform, then turning north-westwards under Taylor's Buildings, Woolwich New Road and terminating at a point under the intersection of Greens End with Powis Street in Woolwich town centre, the first section of tunnel (1,975 metres in length) being under part of North Woolwich, the River Thames, the Royal Arsenal site and

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of Work</i>	<i>(3)</i> <i>Description of work</i>
		<p>the eastern part of Woolwich, commencing 252 metres from the commencement of this work and terminating 15 metres west of Parry Place, 2,227 metres from the commencement of this work, the second section of tunnel (74 metres in length) being under the British Telecom telephone exchange access road and car park and Network Rail down passenger platform, commencing 90 metres west of Parry Place, 2,304 metres from the commencement of this work and terminating 22 metres east of Taylor's Buildings, 2,378 metres from the commencement of this work and the third section of tunnel (109 metres in length) being under part of Woolwich Town Centre, commencing 23 metres west of Taylor's Buildings, 2,424 metres from the commencement of this work and terminating at the termination point of this work, including sections of bored and cut and cover tunnel, intermittent cross passage tunnels between the two parallel bored tunnel structures and tunnel boring machine launch and reception chambers.</p>
<p>In the London Borough of Newham</p>	<p>Work No. 2</p>	<p>A road (380 metres in length) being a realignment of the extension of Hartmann Road, commencing at a point 492 metres west of its junction with Albert Road and Woolwich Manor Way, passing eastwards and terminating at a point 111 metres west of its junction with Albert Road and Woolwich Manor Way.</p>
	<p>Work No. 3</p>	<p>A temporary jetty structure (300 metres in length) in King</p>

Status: This is the original version (as it was originally made).

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of Work</i>	<i>(3)</i> <i>Description of work</i>
		George V Dock commencing 350 metres west of the eastern end of the dock, passing eastwards and terminating 50 metres west of the east end of the dock.
	Work No. 4	A temporary access bridge and conveyor (110 metres in length) from King George V Dock to the adjacent dock side land, commencing at an intersection with Work No. 3, 77 metres west of the eastern end of King George V Dock, passing south-eastwards and terminating at a point 75 metres north-west of the intersection of Albert Road, Woolwich Manor Way, the extension of Hartmann Road and Fishguard Way.
In the London Borough of Greenwich	Work No. 5	An intervention shaft and cross passage structure (68 metres in length) commencing at a point 89 metres north-east of the junction between Argyle Road and Marlborough Road and 4 metres above existing ground level, descending 36 metres vertically and then turning through 90 degrees and passing horizontally eastwards and terminating at an intersection with Work No.1, 1,255 metres from the commencement of that work, including a surface building and underground ventilation and drainage adits and cross passage tunnel structures,
	Work No. 6	An access road (16 metres in length) commencing at a point on the north-east side of Marlborough Road 95 metres north-east of its intersection with Argyle Road, passing north-east across Work No. 8 and terminating 16 metres from its commencement.

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of Work</i>	<i>(3)</i> <i>Description of work</i>
	Work No. 7	A footway (120 metres in length), being a realignment of the existing riverside footway, commencing at a point 43 metres north-east of the junction between Marlborough Road and Argyle Road, passing eastwards, then following the circumference of the intervention shaft in Work No. 5 in a clockwise manner, passing south-eastwards, then north-eastwards and terminating at a junction with the existing footpath 121 metres north-east of the junction between Marlborough Road and Argyle Road.
	Work No. 8	A cycleway (99 metres in length), being a realignment of the existing riverside cycleway, commencing at a point 32 metres north-east of the junction between Marlborough Road and Argyle Road, passing eastwards to the south of the intervention shaft in Work No. 5, crossing Work No. 6, passing south-eastwards, then north-eastwards and terminating at a junction with the existing cycleway 121 metres north-east of the junction between Marlborough Road and Argyle Road.
	Work No. 9	A road (215 metres in length), commencing at the junction between Marlborough Road and Argyle Road, passing north-eastwards, then south-eastwards and terminating at a point on Cadogan Road 105 metres south-east of its junction with Argyle Road.
	Work No. 10	A temporary railway passenger platform (238 metres in length) commencing at the country (east) end of

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of Work</i>	<i>(3)</i> <i>Description of work</i>
		the existing Network Rail Woolwich Arsenal station down passenger platform, passing eastwards under Burrage Road and terminating at a point 10 metres west of Maxey Road.
	Work No. 11	A temporary footbridge (14 metres in length) commencing at a point 23 metres west of Burrage Road on the north side of Network Rail's North Kent Railway Line, passing southwards over Work No. 10 and the North Kent railway line, and terminating at a point 25 metres west of Burrage Road on the south side of the North Kent line.
	Work No. 12	A temporary access ramp (118 metres in length) commencing at a point on the west side of Burrage Road, 46 metres south of its junction with Spray Street and Burrage Grove, passing eastwards and descending and then turning south and terminating at an intersection with Work No. 10 at a point 158 metres from the commencement of that work.
	Work No. 13	An access road (30 metres in length) commencing at a point on the east side of Parry Place 23 metres south of its junction with Spray Street, passing eastwards and terminating 30 metres from its commencement.
	Work No. 14	An access road (185 metres in length), being a replacement of the existing British Telecom telephone exchange access road, commencing at a point on the east side of Taylor's Buildings 36 metres south of its junction with Spray Street, passing south-east eastwards past the south-

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of Work</i>	<i>(3)</i> <i>Description of work</i>
		west side of the existing telephone exchange building, then passing eastwards and terminating at a point on the west side of Parry Place 20 metres south of its junction with Spray Street.
	Work No. 15	An access road (20 metres in length) commencing at a point on the north-west side of Taylor's Buildings 34 metres south of its junction with Spray Street, passing north-westwards and terminating at a point 20 metres from its commencement.
	Work No. 16	A footbridge (20 metres in length) commencing at a point 10 metres east of the south end of Taylor's Buildings on the north side of Network Rail's Woolwich Arsenal station down passenger platform, passing southwards over Network Rail's North Kent Railway Line, and terminating at a point 28 metres north-west of the junction between Helen Street and Vincent Road on the south side of Woolwich Arsenal station up passenger platform.
	Work No. 17	A road (123 metres in length) being a realignment of the existing Woolwich New Road, commencing at a junction with the existing road 10 metres south-west of its junction with Vincent Road and General Gordon Place, passing north-eastwards and terminating at a point on the existing road 26 metres north-east of its junction with Spray Street.
	Work No. 18	A temporary road (110 metres in length), being a temporary diversion of the existing Woolwich New Road, commencing 18 metres

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of Work</i>	<i>(3)</i> <i>Description of work</i>
	<p>Work No. 19A</p>	<p>north-east of its junction with General Gordon Place and Vincent Road, passing north-eastwards, then northwards and terminating at a point 32 metres north of the junction between Spray Street and Woolwich New Road.</p> <p>A sewer (109 metres in length) being a diversion of part of the existing sewer which passes below Burrage Road, commencing underground at a junction with the existing Thames Water Southern Outfall Sewer No. 2 at a location 12 metres east of Burrage Road and 10 metres south of Arthur Grove, passing north-westwards below Arthur Grove and Burrage Road to a point at the east end of Woolwich Arsenal station car park, 15 metres west of Burrage Road, passing westwards below the car park, then southwards below Vincent Road, to terminate at a point under Vincent Road 35 metres west of its intersection with Burrage Road, including the construction of vertical access shaft structures, the diversion of secondary sewage pipes connecting into the main sewer at intermediate locations and works to stop up the existing sewer between the junction of Burrage Road with Vincent Road and the junction of Burrage Road with Spray Street.</p>
	<p>Work No. 19B</p>	<p>A sewer (8 metres in length) being a diversion of part of the existing sewer which passes below Burrage Road, commencing at a point under Burrage Road 3 metres south of its intersection with Arthur Grove passing</p>

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of Work</i>	<i>(3)</i> <i>Description of work</i>
	Works No. 20	<p>northwards below Burrage Road and Arthur Grove and terminating at an intersection with Work No. 19A at a point 5 metres east of the junction between Burrage Road and Arthur Grove, including the construction of vertical access shaft structures, and the diversion of secondary sewage pipes connecting into the main sewer at intermediate locations.</p> <p>A sewer (151 metres in length), being a diversion of the existing sewer which passes below Woolwich New Road and Beresford Square Market Place, commencing underground at a point 40 metres north-east of the junction between Woolwich New Road, General Gordon Place and Vincent Road, passing south-eastwards below Woolwich New Road to the south east side of the existing Woolwich New Road then passing north-eastwards below Work No. 1 to a point 15 metres south of the junction between Woolwich New Road and Spray Street, then passing north-westwards below Woolwich New Road and Beresford Square Market Place to a point 62 metres north-east of the junction between Greens End and Powis Street, then turning north-eastwards to terminate underground at a junction with the existing Thames Water Southern Outfall Sewer No. 1, 71 metres north-east of the junction between Greens End and Powis Street, including the construction of vertical access shaft structures, the diversion of secondary sewage pipes</p>

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of Work</i>	<i>(3)</i> <i>Description of work</i>
		connecting into the main sewer at intermediate locations, and works to temporarily line and then stop up the existing sewer between a point 40 metres north of the junction between Woolwich New Road, General Gordon Place and Vincent Road and its junction with the Southern Outfall Sewer No. 1 at a point 73 metres north-east of the junction between Greens End and Powis Street.

SCHEDULE 2

Articles 4 and 23

ADDITIONAL LAND WHICH MAY BE ACQUIRED OR USED

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on the deposited plans</i>	<i>(3)</i> <i>Purpose for which land may be acquired or used</i>
Woolwich Arsenal	108	Replacement open space
Woolwich Arsenal	115, 117, 118, 124, and 125	Access to intervention shaft

Key to Schedules 3 and 4

CD	Cycleway diversion
FD	Footpath diversion
KM	Kerb line modification
SS	Stopping up of street

SCHEDULE 3

Article 7

STREETS SUBJECT TO ALTERATION OF LAYOUT

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street Subject to alteration of layout</i>	<i>(3)</i> <i>Description of alteration</i>
London Borough of Greenwich	Marlborough Road	Alteration of kerb line to accommodate new junction between KM1, KM2, KM3 and KM4

Status: This is the original version (as it was originally made).

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street Subject to alteration of layout</i>	<i>(3)</i> <i>Description of alteration</i>
	Cadogan Road	Alteration of kerb line to accommodate new junction between KM5 and KM6
	Parry Place	Alteration of kerb line to accommodate widening of road and a new junction between KM7 and KM8
	Parry Place	Alteration of kerb line to accommodate new junction between KM9 and KM10
	Taylor's Buildings	Alteration of kerb line to accommodate new junction between KM11 and KM12
	Taylor's Buildings	Alteration of kerb line to accommodate widening of road and a new junction between KM13 and KM14
	Taylor's Buildings	Alteration of kerb line to accommodate widening of road between KM18 and KM13
	Junction of Spray Street and Woolwich New Road	Alteration of kerb line to accommodate new junction between KM15 and KM16
	Junction of Spray Street and Woolwich New Road	Alteration of kerb line to accommodate new junction between KM17 and KM18

SCHEDULE 4

Articles 10 and 11

STREETS TO BE PERMANENTLY STOPPED UP

PART 1

Streets for which a substitute is to be provided

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street affected</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New street to be substituted</i>
London Borough of Newham	Extension of Hartmann Road	Between points SS1 and SS2	Work No. 2

Status: This is the original version (as it was originally made).

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street affected</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New street to be substituted</i>
London Borough of Greenwich	Riverside footpath	Between points FD1 and FD2	Work No. 7
	Riverside cycleway	Between points CD1 and CD2	Work No. 8
	Marlborough Road	Between points SS3 and SS4	Work No. 9
	Woolwich New Road	Between points SS9 and SS10	Work No. 17

PART 2

Streets for which no substitute will be provided

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>
London Borough of Greenwich	Parry Place	Southern end between points SS5 and SS6
	Taylor's Buildings	Southern end between points SS7 and SS8

SCHEDULE 5

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>
London Borough of Newham	Extension of Hartmann Road
London Borough of Greenwich	Riverside footpath
	Riverside cycleway
	Marlborough Road
	Cadogan Road
	Wellington Avenue
	Tom Cribb Road
	Plumstead Road
	Informal paths over the land numbered 130, 131, 132, 133 and 134 on the deposited plans
Invermore Place	
Maxey Road	

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be temporarily stopped up</i>
	Burrage Grove
	Burrage Road
	Arthur Grove
	Vincent Road
	Spray Street
	Parry Place
	Taylor’s Buildings
	Woolwich New Road
	General Gordon Place
	Greens End
	Beresford Square Market Place
	Powis Street
	Network Rail car park

SCHEDULE 6

Article 19

LAND NOT SUBJECT TO SAFEGUARDING WORKS POWER

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on deposited plans</i>
London Borough of Newham	23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89 and 90
London Borough of Greenwich	91, 106, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222 and 305

SCHEDULE 7

Article 21

LAND NOT SUBJECT TO SURVEY AND INVESTIGATION POWER

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on deposited plans</i>
London Borough of Newham	23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89 and 90
London Borough of Greenwich	91, 113, 114, 127, 128, 129, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 159, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221 and 222

SCHEDULE 8

Article 26

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 shall 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 prejudice to the generality of paragraph 1, the Land Compensation Act 1973⁽³⁴⁾ shall have 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 shall be substituted the words “a right over land is purchased”; and
- (b) for the words “acquired or taken from him” there shall be 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—

⁽³⁴⁾ 1973 c. 26.

- (a) for the word “part” in paragraphs (a) and (b) there shall be substituted the words “a right over land consisting”;
- (b) for the word “severance” there shall be 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 shall be substituted the words “right proposed”; and
- (d) for the words “part is” there shall be substituted the words “right is”.

Adaptation of the 1965 Act

3.—(1) The 1965 Act shall have 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 reference 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 prejudice to the generality of sub-paragraph (1), Part I of the 1965 Act shall apply 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) there shall be substituted the following section:—

“**7.** In assessing the compensation to be paid by the acquiring authority under this Act, regard shall 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 his, 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 (provisions as to divided land) there shall be substituted the following:—

“**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 Lands Tribunal (“the tribunal”); and
- (b) before the tribunal has determined that question the person satisfies the tribunal that he has an interest which he is able and willing to sell in the whole of the relevant land 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 Docklands Light Railway (Woolwich Arsenal Extension) Order 2004 (“the Order”) shall, in relation to that person cease to authorise the purchase of the right and be deemed to authorise the purchase of that person’s interest in the whole of

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the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice shall be 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 shall 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 six 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);

shall be so modified 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) shall be so modified as to secure that, as from the date on which the acquiring authority have served notice to treat in respect of any right, they have power, exercisable in the like circumstances and subject to the like conditions, to enter for the purpose of exercising that right (which shall be 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 shall be modified correspondingly.

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

9. Section 22 of the 1965 Act (protection of acquiring authority’s possession where by inadvertence an estate, right or interest has not been got in) shall be so modified 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 9

Article 28

ACQUISITION OF SUBSOIL AND NEW RIGHTS ONLY

PART 1

Land in which only subsoil or new rights in subsoil may be acquired

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on deposited plans</i>
London Borough of Newham	23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89 and 90
London Borough of Greenwich	91, 92, 94, 104, 105, 109, 110, 111, 112, 113, 114, 121, 122, 126, 127, 128, 129, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 242 and 244

PART 2

Land in which only new rights may be acquired

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on deposited plans</i>
London Borough of Newham	3
London Borough of Greenwich	94, 109, 110, 115, 117, 118, 122, 124, 125, 234, 255b, 255d, 259, 276, 278, 289, 290, 297, 298 and 303

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SCHEDULE 10

Articles 4, 21 and 30

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on the deposited plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Authorised work</i>
King George V Dock	2, 12, 13, 14, 20	Work sites, dock for spoil removal	Works Nos. 1, 2, 3 and 4
Within and adjacent to the River Thames	93, 106, 107	Work site and river access	Works Nos. 5, 6, 7, 8 and 9
Land adjacent to Wellington Avenue, Woolwich Arsenal	116, 119, 120, 123	Work site	Work No. 1
Land adjacent to Plumstead Road	130, 131, 132, 159, 160	Work site for settlement mitigation works and for temporary replacement car parking	Work No. 1
Railway track and adjacent land	206	Site of a temporary railway platform and access ramp	Works Nos. 10 and 12
Car Park to Greenwich Community College	233	Work site for settlement mitigation works and for temporary replacement car parking	Work No. 1
Part of Woolwich New Road	274	Traffic management for road re-alignment	Works Nos. 17 and 18
Land adjacent to Beresford Street	305	Work site for sewer diversion works	Work No. 20

SCHEDULE 11

Articles 30 and 31

LAND OF WHICH TEMPORARY POSSESSION MAY NOT BE TAKEN

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on deposited plans</i>
London Borough of Newham	23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89 and 90

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on deposited plans</i>
London Borough of Greenwich	91, 111, 112, 113, 114, 126, 127, 128, 129, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 237, 242, 244, 276, 278, 289, 290, 297 and 298

SCHEDULE 12

Articles 10, 35 and 41

PROVISIONS RELATING TO STATUTORY UNDERTAKERS, ETC.

Apparatus of statutory undertakers, etc., on land acquired

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

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

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

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

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

shall be entitled to recover from DLRL compensation in respect of expenditure reasonably incurred by him, in consequence of the removal, for the purpose of making his drain or sewer communicate with any other public sewer or with a private sewage disposal plant.

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

(6) In this paragraph—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003⁽³⁵⁾; and

“public utility undertakers” has the same meaning as in the Highways Act 1980⁽³⁶⁾.

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

2.—(1) Where a street is stopped up under article 10 of this Order any statutory utility whose apparatus is under, in, upon, over, along or across the street shall have the same powers and rights in respect of that apparatus, subject to the provisions of this paragraph, as if this Order had not been made.

(2) DLRL shall give not less than 28 days' notice in writing of its intention to stop up any street under article 10 of this Order to any statutory utility whose apparatus is under, in, upon, over, along or across that street.

(3) Where notice under sub-paragraph (2) has been given, any statutory utility whose apparatus is under, in, upon, over, along or across the street may where reasonably necessary for the efficient operation of the undertaking of the statutory utility and, if reasonably requested so to do by DLRL, shall—

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

(4) Subject to the following provisions of this paragraph, DLRL shall pay to any statutory utility an amount equal to the cost reasonably incurred by the statutory utility in or in connection with:—

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

(5) If in the course of the execution of relocation works under sub-paragraph (3)—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions except where this has been solely due to using the nearest available type, capacity or dimension; 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 DLRL, or, in default of agreement, is not determined by arbitration to be necessary in consequence of the construction of the authorised works in order to ensure the continued efficient operation of the undertaking of the statutory utility, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as

⁽³⁵⁾ 2003 c. 21.

⁽³⁶⁾ 1980 c. 66.

the case may be, the amount which apart from this sub-paragraph would be payable to the statutory utility by virtue of sub-paragraph (4) shall be reduced by the amount of that excess.

(6) For the purposes of sub-paragraph (5)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus except in a case where the apparatus as so extended provides more than an equivalent service; 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 shall be treated as if it also had been agreed or had been so determined.

(7) An amount which apart from this sub-paragraph would be payable to a statutory utility in respect of works by virtue of sub-paragraph (4) (and having regard, where relevant, to sub-paragraph (5)) shall, 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 statutory utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit as calculated in accordance with the Code of Practice entitled “Measures Necessary where Apparatus is Affected by Major Works (Diversionary Works)” and dated June 1992 and approved by the Secretary of State on 30 June, 1992, as revised and re-issued from time to time.

(8) Sub-paragraphs (4) to (7) shall not apply where the authorised works constitute major transport works for the purposes of Part III of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works shall be determined in accordance with section 85 of that Act (sharing of costs of necessary measures) and any regulations for the time being having effect under that section; and
- (b) the allowable costs shall be borne by DLRL and the statutory utility in such proportions as may be prescribed by any such regulations.

(9) The temporary stopping up, alteration or diversion of any highway under article 10 of this Order shall not affect any right of a public communications provider in respect of any apparatus which at the time of the stopping up or diversion is in the highway.

(10) In this paragraph—

“apparatus” has the same meaning as in Part III of the 1991 Act;

“public communications provider” has the same meaning as in paragraph 1(6);

“relocation works” means works executed, or apparatus provided, under sub-paragraph (3); and

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

SCHEDULE 13

Article 42

FOR PROTECTION OF RAILWAY INTERESTS

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

2. In this Schedule—

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

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

“EWS” mean English Welsh & Scottish Railway Limited and includes its successors from time to time;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail (then called Railtrack PLC) by the Secretary of State in exercise of his powers under section 8 of the Railways Act 1993⁽³⁷⁾;

“Network Rail” means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 736 of the Companies Act 1985⁽³⁸⁾) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

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

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

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

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

“RES” means Rail Express Systems Limited and includes its successors from time to time;

“South Eastern Trains” means South Eastern Trains Limited or (where the context permits) its successors as station facility owner (as defined in the Railways Act 1993) in relation to Network Rail’s existing station known as Woolwich Arsenal; and

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

3.—(1) Where under this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail, EWS, RES and South Eastern Trains shall—

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

⁽³⁷⁾ 1993 c. 43.

⁽³⁸⁾ 1985 c. 6.

4.—(1) DLRL shall not exercise the powers conferred by article 21 or the powers conferred by section 11(3) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

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

(3) DLRL shall not exercise the powers conferred by section 271 or 272 of the 1990 Act, as applied by Schedule 12 to this Order, in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) DLRL shall not under the powers conferred by this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent shall not be unreasonably withheld but may be given subject to reasonable conditions.

5.—(1) DLRL shall before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work shall not be constructed except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

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

(3) If by the end of the period of 56 days beginning with the date on which such plans have been supplied to Network Rail, Network Rail gives notice to DLRL that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if DLRL desires such part of the specified work to be constructed, Network Rail shall construct it (together with any adjoining part of the specified work which DLRL reasonably requires to be constructed in one operation with that work) with all reasonable dispatch on behalf of and to the reasonable satisfaction of DLRL in accordance with the plans approved or deemed to be approved or settled under this paragraph and under the supervision (where appropriate and if given) of DLRL.

(4) In the event of Network Rail not constructing or completing any part of a specified work pursuant to sub-paragraph (3) with all reasonable dispatch and to the reasonable satisfaction of DLRL in accordance with such programme as may be agreed with DLRL or settled by arbitration, Network Rail shall pay compensation to DLRL for any loss which it may sustain as a result.

(5) When signifying his approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before the commencement of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation of works, apparatus and equipment necessitated by a specified work), and such protective works as may be reasonably necessary for those purposes shall be constructed by Network Rail or by DLRL, if Network Rail so desires, with all reasonable dispatch and DLRL shall not commence the construction of the specified works until the engineer has notified DLRL that the protective works have been completed to his reasonable satisfaction.

6.—(1) Any specified work shall, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;

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- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable and consistent with the efficient and economic construction and operation of the specified work, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property,

and, if any damage to railway property or any such interference or obstruction is caused or takes place in consequence of the construction of a specified work, DLRL shall, notwithstanding any such approval, make good such damage and shall pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(2) Nothing in this Schedule shall impose any liability on DLRL with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents.

7. DLRL shall—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as he may reasonably require with regard to a specified work or the method of constructing it.

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

9.—(1) If any alterations or additions, either permanent or temporary, to railway property are reasonably necessary during the construction of a specified work, or during a period of 12 months after the commencement of regular revenue-earning train operations using the new railways comprised in any specified work, in consequence of the construction of a specified work, and Network Rail gives to DLRL reasonable notice of its intention specifying the alterations or additions to be carried out, DLRL shall pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) The engineer shall, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a), provide such details of the formula by which those sums have been calculated as DLRL may reasonably require.

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

10. DLRL shall repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of DLRL as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph 5(5) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works; and
- (b) in respect of the approval by the engineer of plans submitted by DLRL and the supervision by him of the construction of a specified work.

11.—(1) In this paragraph—

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

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

(2) This paragraph shall apply to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 5(1) for the relevant part of the authorised works giving rise to EMI (unless DLRL has been given notice in writing before the approval of those plans of the intention to make such change).

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

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

- (a) DLRL shall consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter shall continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail shall make available to DLRL all information in Network Rail’s possession reasonably requested by DLRL in respect of Network Rail’s apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail shall allow DLRL reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to sub-paragraph (a).

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

(6) If at any time prior to the commencement of regular revenue-earning train operations on the new railways comprised in the authorised works and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised works causes EMI then DLRL shall immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) DLRL’s apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail’s apparatus.

(7) In the event of EMI having occurred—

- (a) DLRL shall afford reasonable facilities to Network Rail for access to DLRL’s apparatus in the investigation of such EMI;
- (b) Network Rail shall afford reasonable facilities to DLRL for access to Network Rail’s apparatus in the investigation of such EMI; and

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- (c) Network Rail shall make available to DLRL any additional material information in its possession reasonably requested by DLRL in respect of Network Rail's apparatus or such EMI.
- (8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraph (5) or (6)—
 - (a) Network Rail shall allow DLRL reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
 - (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs shall be carried out and completed by DLRL in accordance with paragraph 6.
- (9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) shall apply to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.
- (10) For the purpose of paragraph 10(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.
- (11) In relation to any dispute arising under this paragraph the reference in article 55 to the Institution of Civil Engineers shall be read as a reference to the Institution of Electrical Engineers.
- 12.** If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to DLRL informing it that the state of maintenance of the specified work appears to be such as adversely affects the operation of railway property, DLRL shall, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.
- 13.** DLRL shall not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it shall have first consulted Network Rail and it shall comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.
- 14.** Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work shall, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to DLRL, be repaid by DLRL to Network Rail.
- 15.—(1)** DLRL shall pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Schedule which may be occasioned to or reasonably incurred by Network Rail—
 - (a) by reason of the construction or maintenance of a specified work or the failure thereof; or
 - (b) by reason of any act or omission of DLRL or of any person in its employ or of its contractors or others whilst engaged upon a specified work;and DLRL shall indemnify Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission; and the fact that any act or thing may have been done by Network Rail on behalf of DLRL or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse DLRL from any liability under the provisions of this sub-paragraph.

(2) Network Rail shall give DLRL reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of DLRL.

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

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

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

(6) In this paragraph—

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

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

16. Network Rail shall, on receipt of a request from DLRL, from time to time provide DLRL free of charge with written estimates of the costs, charges, expenses and other liabilities for which DLRL is or will become liable under this Schedule (including the amount of the relevant costs mentioned in paragraph 15) and with such information as may reasonably enable DLRL to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Schedule (including any claim relating to those relevant costs).

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

18. DLRL and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to DLRL of—

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

SCHEDULE 14

Article 43

FOR PROTECTION OF THE LONDON BOROUGHS OF NEWHAM AND GREENWICH

1.—(1) The following provisions of this Schedule shall, unless otherwise agreed in writing between DLRL and the appropriate Council have effect.

(2) In this Schedule—

“the appropriate Council” means—

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- (i) the Council of the London Borough of Newham, in relation to any authorised work constructed in the area of that council; or
- (ii) the Council of the London Borough of Greenwich, in relation to any authorised work constructed in the area of that council;

“highway” means a street vested in or maintainable by the appropriate Council; and

“highway operations” means the construction of any part of the authorised works which will involve interference with a highway or the traffic in a highway and any temporary stopping up, alteration or diversion of a highway.

2. Before commencing to construct any scheduled work DLRL shall consult the appropriate Council about—

- (a) the programme for the construction of that work so as to secure, so far as may be reasonably practicable, that the duration of any disturbance occasioned by, or in connection with, such construction shall be reduced to a minimum; and
- (b) the land within the Order limits to be occupied and used by DLRL as temporary working sites for the purpose of such construction, the period for which and the manner in which each site shall be used and the steps to be taken by DLRL in order to mitigate any injury to amenity.

3. DLRL shall consult the appropriate Council as to—

- (a) the routes in the appropriate Council’s area proposed to be used by vehicles, machinery and plant, passing to or from any works under construction; and
- (b) the proposed manner and method of disposing of any soil or waste material resulting from the carrying out of any operation in connection with the authorised works;

and such soil or waste material shall not be disposed of by DLRL in the appropriate Council’s area in any manner as shall be objected to in writing by the appropriate Council.

4. Before commencing to construct any authorised work which will involve highway operations, DLRL shall consult the appropriate Council as to the time when that work will be commenced, as to the extent of the surface of the highway which it may be reasonably necessary for DLRL to occupy in the construction of that work, and as to the conditions under which that work shall be constructed so as not to cause so far as possible inconvenience to the public and to ensure the safety of the public.

5. Any such highway shall be reinstated by DLRL in a manner reasonably approved by the appropriate Council and to its reasonable satisfaction.

6. DLRL shall not, except with the consent of the appropriate Council, deposit any soil, subsoil or materials or stand any vehicle or plant on any highway (except on so much thereof as is for the time being temporarily stopped up or occupied under the powers of this Order) so as to obstruct the use of such highway by any person or, except with the like consent, deposit any soil, subsoil or materials on any highway except within a hoarding.

7. Except in an emergency or where reasonably necessary to secure the safety of the public no direction or instruction shall be given by the appropriate Council to the contractors, servants or agents of DLRL regarding any highway operations without the prior consent in writing of DLRL; but the appropriate Council shall not be liable for any additional costs which may be incurred as a result of the giving of instructions or directions pursuant to this paragraph.

8. DLRL shall, if reasonably so required by the appropriate Council, provide and maintain during such time as DLRL may occupy any part of a highway for the purpose of the construction of any part of the authorised works, temporary ramps for vehicular traffic or pedestrian traffic, or both, and any other traffic measures required to protect the safety of road users in accordance with the standard recommended in Chapter 8 of the Traffic Signs Manual issued for the purposes of the Traffic Signs

Regulations and General Directions 1994(39) in such position as may be necessary to prevent undue interference with the flow of traffic in any highway.

9. DLRL shall indemnify the appropriate Council against any claim which may arise as a result of any subsidence of, or damage to, any highway or any retained sanitary convenience, refuge, sewer, drain, lamp column, traffic sign, bollard, bin for refuse or road materials or apparatus connected therewith or any other property or work belonging to, or under the jurisdiction or control of, the appropriate Council on or under any highway, or maintainable by them, which may be caused by, or in consequence of, any act or default of DLRL, its contractors, servants or agents but the appropriate Council shall give to DLRL reasonable notice of any such claim and no settlement or compromise of it shall be made without DLRL's prior consent.

10. Wherever in this Schedule provision is made with respect to the approval or consent of the appropriate Council, that approval or consent shall be in writing and may be given subject to such reasonable terms and conditions as the appropriate Council may require in the interests of safety and in order to minimise inconvenience to persons using the highway, but shall not be unreasonably withheld.

11. Unless otherwise agreed between the parties any difference arising between DLRL and the appropriate Council under this Schedule (other than a difference as to its meaning or construction) shall be determined by arbitration in accordance with article 55.

SCHEDULE 15

Article 44

FOR PROTECTION OF THE ENVIRONMENT AGENCY

1. For the protection of the Environment Agency (in this Schedule referred to as "the Agency") the provisions of this Schedule shall, unless otherwise agreed in writing between DLRL and the Agency, have effect.

2. In this Schedule—

"construction" includes execution, placing, altering, replacing, relaying and, in relation to temporary works, removal; and "construct" and "constructed" shall be construed accordingly; "damage" includes scouring, erosion and environmental damage and "damaged" shall be construed accordingly;

"drainage work" means any watercourse and includes any land used for providing flood storage capacity for any watercourse, and land shown on indicative floodplain maps published by the Agency from time to time as being available to provide flood storage capacity for any watercourse, and any bank, wall, embankment or other structure or appliance constructed or used for land drainage, flood defence or tidal monitoring;

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

"plans" includes sections, drawings, specifications and method statements;

"specified work" means so much of any work or operation authorised by this Order (other than works required in an emergency) 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 flow of water in or flowing to or from any drainage work;

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- (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;

“the Thames inlet” means the inlet of the River Thames within the land numbered 92 and 107 on the deposited plans; and

“watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers (other than public sewers within the meaning of the Water Industry Act 1991)⁽⁴⁰⁾ and passages through which water flows (whether or not the flow is intermittent).

3.—(1) Before beginning to construct any specified work and again at the written request of the Agency following its completion, DLRL shall at its own expense and to the reasonable satisfaction of the Agency, conduct a survey of the condition of the river wall on each side of the River Thames so far as situated within 30 metres in each direction of the outermost extremity of that work or, in the case of Work No. 5, within 75 metres in each direction of the outermost extremity of that work and submit a report on their condition to the Agency.

(2) DLRL’s obligations under sub-paragraph (1) in relation to the north side of the River Thames shall be subject to DLRL obtaining all necessary consents and permissions to carry out the surveys, which it shall use all reasonable endeavours to obtain.

(3) If any defects are identified in the initial survey conducted pursuant to sub-paragraph (1), being defects which may be affected by the construction of the specified works, DLRL shall monitor the defects not less than once every four weeks, where tides permit, during the construction of the specified works in accordance with such reasonable requirements as the Agency may specify or, if the Agency reasonably requires having regard to the results of any such monitoring, at such lesser intervals as the Agency may specify.

(4) In addition to the survey and monitoring work carried out under sub-paragraphs (1) and (3), DLRL shall install and maintain monitoring equipment and carry out monitoring of drainage work structures to the reasonable satisfaction of the Agency for movement, including settlement, in all areas likely to be affected by any specified work. DLRL shall continue monitoring until such time as the Agency gives its written consent that the monitoring may cease, such consent not to be unreasonably withheld. For the purpose of monitoring settlement, DLRL shall establish survey pins in drainage work structures whose structural integrity may be at risk due to settlement from the construction of Work No. 1 or 5.

(5) DLRL shall immediately notify the Agency should the results of the monitoring indicate any of the following—

- (a) settlement of 5 mm or more between consecutive readings;
- (b) angular distortion in excess of 1/2,500;
- (c) total settlement of any part of a drainage work in excess of 20 mm; or
- (d) movement of defects in a drainage work such that damage greater than Degree 2 as specified in the Building Research Establishment Report No. CP 51/78⁽⁴¹⁾ can be expected.

(6) Before beginning to construct any specified work above the surface of the bed of the River Thames and thereafter at two weekly intervals until its completion, or at such greater intervals as the Agency may agree (such agreement not to be unreasonably withheld) for the period following the

⁽⁴⁰⁾ 1991 c. 56.

⁽⁴¹⁾ This report is entitled Soil Sampling, 9th International Conference on Soil Mechanics and Foundation Engineering. Speciality Session 2. Papers and Discussions. Behaviour of Foundations and Structures by J. B. Burland et al Vol. 9th 1977. Shelfmark 8404.907. British Library.

completion of its foundation works, DLRL shall at its own expense and to the reasonable satisfaction of the Agency survey the levels of the foreshore within the Thames inlet and within 50 metres to the west and east of the Thames inlet at points agreed by the Agency, such agreement not to be unreasonably withheld, and submit a report on those levels to the Agency.

(7) If, during the construction of any specified work, any defects in the river wall deteriorate DLRL shall immediately cease the construction of those of the authorised works causing, or likely to be causing that deterioration, unless to do so could cause the defects to deteriorate further, and not re-commence the construction otherwise than in accordance with such reasonable requirements as shall be specified by the Agency as soon as reasonably practicable after it has been notified of the deterioration, which may include changes to working methods and the completion of mitigation works.

(8) The Agency will supply to DLRL within 28 days of any request (whenever made) copies of all plans, drawings, records and calculations relating to the manner of construction and condition of the river walls on each side of the River Thames that the Agency has in its possession or under its control.

(9) In exercising the powers of articles 15 and 30 in relation to the River Thames DLRL will not moor against the river wall on the south side of the River Thames, or on the foreshore adjacent to that wall more than two barges at any one time without the Agency's consent.

4.—(1) Before beginning to construct any specified work, DLRL shall submit to the Agency plans of the work and such further particulars available to it as the Agency may reasonably require.

(2) Any such specified work shall not be constructed except in accordance with such plans as may be approved in writing by the Agency, or settled in accordance with paragraph 12 and, where applicable, in accordance with any requirements specified under paragraph 3(7).

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

- (a) shall not be unreasonably withheld;
- (b) shall be deemed to have been given if it is neither given nor refused within 2 months of the submission of plans for approval in writing 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 impose for the protection of any drainage work or the fishery or water resources, for the prevention of flooding or water pollution and in the discharge of its environmental and recreational duties.

(4) No part of Work No 5. may be constructed above the surface of the bed of the River Thames without the Agency's consent.

5. Without prejudice to the generality of paragraph 4, the requirements which the Agency may impose under that paragraph include conditions requiring DLRL at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary to safeguard any drainage work against damage or 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.

6.—(1) Any specified work, and all protective works required by the Agency under paragraph 4, shall be constructed to the reasonable satisfaction of the Agency and the Agency shall be entitled by its officer to watch and inspect the construction of such works.

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

(3) If any part of the works comprising a structure in, over, under or within 16 metres of a drainage work is constructed otherwise than in accordance with the requirements of this Schedule, the Agency may by notice in writing require DLRL, at DLRL's own expense, to comply with the requirements of this Schedule or (if DLRL so elects and the Agency in writing consents, such consent not to be unreasonably withheld) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(4) Subject to sub-paragraph (5), if within a reasonable period, being not less than 28 days from the date when notice under sub-paragraph (3) is served upon DLRL, it has failed to begin taking steps to comply with the requirements of the notice and thereafter 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 shall be recoverable from DLRL.

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

7.—(1) 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 work is otherwise damaged, such impairment or damage shall be made good by DLRL to the reasonable satisfaction of the Agency and, if DLRL fails to do so, the Agency may make good the same and recover from DLRL the expense reasonably incurred by it in so doing.

(2) Subject to the provisions of this Schedule and except to the extent that the Agency or any other person is liable to maintain any drainage work and is not precluded by the exercise of the powers of this Order from doing so, DLRL shall from the commencement of the construction of the specified works until their completion maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation or on land held by DLRL for the purposes of or in connection with the specified works, whether or not the drainage work is to be constructed under the powers of this Order or is already in existence.

(3) In so far as any drainage work mentioned in sub-paragraph (2) has been the subject of a survey conducted under paragraph 3(1) then it shall be maintained pursuant to sub-paragraph (2) to the same standard of repair and condition as that survey showed it to be in before commencement of the specified work concerned.

(4) If any such work which DLRL is liable to maintain pursuant to sub-paragraph (2) is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require DLRL to repair and restore the work, or any part thereof, or (if DLRL so elects and the Agency consents in writing, such consent not to be unreasonably withheld), to remove the work and restore the site (including any sea defences) to its former condition, to such extent and within such limits as the Agency reasonably requires.

(5) If, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any work is served on DLRL under sub-paragraph (4), DLRL has failed to begin to take steps to comply with the reasonable requirements of the notice or has not thereafter made reasonably expeditious progress towards repairing and restoring the work or removing the work and restoring the site, as the case may be, the Agency may do anything reasonably necessary to ensure compliance with the notice and may recover from DLRL any expenditure reasonably incurred by it in so doing.

(6) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (4) the Agency shall not, except in a case of an emergency, exercise the powers of sub-paragraph (5) until the dispute has been determined.

(7) If any maintenance of a drainage work carried out by DLRL pursuant to sub-paragraph (2) is not required as a result of, or is not attributable to the construction of the specified works, then DLRL may recover the expenditure reasonably incurred by it in maintaining the drainage work from the person who is ordinarily liable to maintain that work.

(8) In the event that the Agency recovers from DLRL any expenditure for work carried out by it under sub-paragraph (5) in respect of maintenance that is not required as a result of, or is not attributable to the construction of the specified works, then DLRL may in turn recover from the person who is ordinarily liable to maintain the drainage work so much of that expenditure as that person would ordinarily have incurred in maintaining the work.

8.—(1) Without prejudice to the other provisions of this Schedule, DLRL shall take all such measures as may be reasonably practicable to prevent any interruption to 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 DLRL 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) 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 the fishery, DLRL fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and may recover from DLRL the expense reasonably incurred by it in doing so.

(4) 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 DLRL the reasonable cost of so doing provided that a notice specifying those steps is served on DLRL as soon as is reasonably practicable after the Agency has taken, or begun to take, the steps specified in the notice.

9. DLRL shall 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 and reports under this Schedule; and
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Schedule.

10.—(1) Without prejudice to the other provisions of this Schedule, DLRL shall indemnify the Agency from all claims, demands, proceedings, costs, damages or expenses or loss which may be made or taken against, or 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 works or any sewers, drains and watercourses;
- (d) any flooding or increased flooding of any such lands; or

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(e) inadequate water quality in any watercourse or other surface waters or in groundwater; which is caused by the construction of any of the works or any act or omission of DLRL, its contractors, agents, or employees whilst engaged upon any such work.

(2) The Agency shall give DLRL reasonable notice of any such claim or demand and no settlement or compromise thereof shall be made without the agreement of DLRL, which agreement shall not be unreasonably withheld.

11.—(1) The fact that any work or thing has been executed or done 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 by an arbitrator, shall not relieve DLRL from any liability under the provisions of this Schedule.

(2) Sub-paragraph (1) shall not apply to the extent that such liability arises from a failure by the Agency properly to perform its functions.

12.—(1) Unless the parties agree to arbitration under article 55, any difference arising between DLRL and the Agency under paragraph 4 shall be settled 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 DLRL or the Agency after notice by one to the other.

(2) Where a reference is made under sub-paragraph (1), DLRL and the Agency shall pay such of the reasonable costs of the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Transport incurred in the determination of that reference as the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Transport jointly shall direct.

(3) Subject to sub-paragraph (1), any difference arising between DLRL and the Agency under this Schedule (other than a difference as to its meaning or construction) shall be resolved by an arbitrator under article 55.

SCHEDULE 16

Article 45

FOR PROTECTION OF SPECIFIED UNDERTAKERS

Interpretation

1. In this Schedule—

“apparatus” means—

- (a) in the case of a specified undertaker which is an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(42)) belonging to, or maintained by, that undertaker;
- (b) in the case of a specified undertaker which is a gas undertaker, mains, pipes or other apparatus belonging to, or maintained by, a public gas transporter for the purposes of the transportation and storage of gas;
- (c) in the case of a specified undertaker which is a water undertaker, mains, pipes or other apparatus belonging to, or maintained by, the undertaker for the purposes of water supply; and
- (d) in the case of a specified undertaker which is a sewerage undertaker,

(42) 1989 c. 29.

- (i) any drain or works vested in the undertaker under the Water Industry Act 1991⁽⁴³⁾; 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; 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 for the lodging therein of apparatus or for giving access to such apparatus;

“construction” includes execution, placing, altering, replacing, relaying and removal and, in its application to works which include or comprise any operation, means the carrying out of that operation;

“emergency works” has the same meaning as in section 52 of the 1991 Act;

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

“necessary alternative apparatus” means alternative apparatus adequate to enable a specified undertaker to fulfil its statutory or licensed functions in a manner no less efficient than previously;

“plans” includes sections, specifications and method statements;

“specified work” means any of the authorised works which—

- (a) will or may be situated over, or within 15 metres measured in any direction of, or may in any way adversely affect, any apparatus; or
- (b) wherever situated, imposes any load upon any sewer;

the removal of which has not been required under paragraph 8; and

“specified undertaker” means—

- (a) London Electricity Group plc (company registration number 2366852), whose registered office is Templar House, 81-87 High Holborn, London WC1V 6NU;
- (b) S + S Limited (company registration number SC 214382), whose registered office is Inveralmond House, 200 Dunkeld Road, Perth PH1 3AQ; and
- (c) Transco plc, whose registered office is 1-3 Strand, London WC2N 5EH,

or any person succeeding any such company as a licence holder within the meaning of Part I of the Electricity Act 1989, a public gas transporter within the meaning of Part I of the Gas Act 1986⁽⁴⁴⁾, a water undertaker within the meaning of the Water Industry Act 1991 or as a sewerage undertaker within the meaning of Part I of that Act, and “the specified undertaker” in relation to any apparatus means the specified undertaker to whom the apparatus belongs or by whom it is maintained.

Application of Schedule 12

2. Paragraphs 1(1) and 2 of Schedule 12 to this Order shall not apply in relation to a specified undertaker and paragraphs 1(3) and 1(4) of that Schedule shall have effect as if they referred to apparatus removed under this Schedule.

⁽⁴³⁾ 1991 c. 56.

⁽⁴⁴⁾ 1986 c. 44.

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Apparatus in stopped up streets

3. Where any street is stopped up under article 10 of this Order, any specified undertaker whose apparatus is in the street shall have the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up, but nothing in this paragraph shall affect any right of DLRL or of the specified undertaker to require the removal of that apparatus under paragraph 8 or the power of DLRL to carry out works under paragraphs 20 to 29.

4. DLRL shall give not less than 28 days' notice in writing of its intention to stop up any street under article 10 of this Order to any specified undertaker whose apparatus is in that street.

On-street apparatus

5. This Schedule shall not apply to anything done or proposed to be done in relation to or affecting any apparatus in so far as the relations between DLRL and the specified undertaker are regulated by the provisions of Part III of the 1991 Act.

Acquisition of land

6. DLRL shall not acquire any apparatus from a specified undertaker pursuant to this Order otherwise than by agreement.

7. DLRL may in exercise of the powers of this Order acquire or appropriate any land in which any apparatus is placed and, following the removal of such apparatus in accordance with the provisions of this Schedule, any rights in that land relating to that apparatus shall be extinguished but no apparatus shall be removed nor shall any right of the specified undertaker to use, maintain or renew any apparatus be extinguished until any necessary alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the specified undertaker.

Removal of apparatus

8. Paragraphs 9 to 12 apply where—

- (a) DLRL requires the removal of any apparatus for the purpose of constructing any of the authorised works and gives to the specified undertaker not less than 56 days' written notice of that requirement together with a plan of the proposed work and of the proposed position of the alternative apparatus to be provided or constructed; or
- (b) in consequence of the exercise or proposed exercise of any of the powers of this Order, the specified undertaker reasonably requires to remove any apparatus.

9. DLRL shall, if it is practicable to do so, afford to the specified undertaker the necessary rights and facilities for the construction of any necessary alternative apparatus in other land which is available for the purpose and which is held or used, or intended for use, by DLRL for the purpose of its undertaking or in which it has sufficient rights or interests and thereafter for the use, maintenance and renewal of such apparatus and, if DLRL is unable to obtain those rights and facilities, the specified undertaker shall, on receipt of a written notice to that effect from DLRL, use its best endeavours to obtain the necessary rights and facilities.

10. The obligation imposed upon the specified undertaker by paragraph 9 shall not extend to the exercise by the specified undertaker of any power to acquire any land or rights in land by compulsory purchase order.

11. Any alternative apparatus to be constructed by the specified undertaker pursuant to paragraph 9 shall be constructed in such manner, and in such line or situation, as may be agreed between the specified undertaker and DLRL or, in default of agreement, determined by arbitration.

12. The specified undertaker shall, after the manner of construction and the line or situation of any necessary alternative apparatus have been agreed or determined and after the grant to or obtaining by the specified undertaker of any such facilities and rights as are referred to in paragraph 9, proceed with all reasonable despatch to construct and bring into operation the alternative apparatus and thereafter to remove any apparatus required by DLRL to be removed in accordance with paragraph 8.

Removal of apparatus and construction of alternative apparatus by DLRL

13. Paragraphs 14 to 16 apply to so much of the work necessary in connection with the construction of alternative apparatus, or the removal of apparatus required to be removed, as will take place in any land held or used, or intended for use, by DLRL for the purpose of its undertaking.

14. If DLRL gives notice in writing to the specified undertaker that it desires to carry out any part of any work to which this paragraph applies, such work, instead of being carried out by the specified undertaker, may be carried out by DLRL with the prior written consent of the specified undertaker (which shall not be unreasonably withheld and shall be subject to any such conditions as are reasonable and proper to protect the apparatus) in accordance with plans and in a position agreed between the specified undertaker and DLRL or, in default of agreement, determined by arbitration, with all reasonable despatch under the superintendence (if given) and to the reasonable satisfaction of the specified undertaker.

15. In carrying out any work under paragraph 14 DLRL shall comply with all statutory obligations which would have been applicable had the works been carried out by the specified undertaker.

16. Nothing in paragraph 14 shall authorise DLRL to carry out the actual placing, erection, installation, bedding, packing, removal, connection or disconnection of any apparatus or, where the apparatus is laid in a trench, execute any filling around the apparatus within 600 millimetres (measured in any direction) of the apparatus.

Facilities and rights for alternative apparatus

17. Where, in accordance with the provisions of this Schedule, DLRL affords to the specified undertaker facilities and rights for the construction, use, maintenance and renewal in land of DLRL of alternative apparatus in substitution for apparatus to be removed as aforesaid, those facilities and rights shall be granted upon such terms and conditions as may be agreed between DLRL and the specified undertaker or, in default of agreement, determined by arbitration.

18. In determining the terms and conditions mentioned in paragraph 17 in respect of alternative apparatus to be constructed across or along the authorised works the arbitrator shall—

- (a) give effect to all reasonable requirements of DLRL for ensuring the safety of the authorised works and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any such works; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the case, give effect to any terms and conditions applicable to the apparatus (if any) constructed across or along the authorised works for which the alternative apparatus is to be substituted and to any other reasonable requirements of the specified undertaker.

19. If the facilities and rights to be afforded by DLRL in respect of any alternative apparatus under paragraph 17 and the terms and conditions subject to which the same are to be granted are, in the opinion of the arbitrator, more or less favourable on the whole to the specified undertaker than the facilities, rights, terms and conditions applying to the apparatus to be removed, the arbitrator shall make such provision for the payment of compensation to or by DLRL by or to the specified undertaker in respect thereof as shall appear to him to be reasonable having regard to all the circumstances of the case.

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Retained apparatus: protection and plan approval

20. Not less than 56 days before commencing to construct or renew any specified work, DLRL shall submit to the specified undertaker plans of the works.

21. In relation to a work which is a specified work because of its proximity to or effect on a sewer, the plans to be submitted to the specified undertaker under paragraph 20 shall be detailed plans describing—

- (a) the exact position of the specified work;
- (b) the level at which it is proposed to be constructed or renewed;
- (c) the manner of its construction or renewal;
- (d) the position of all sewers within 15 metres of the specified work or upon which the specified work will impose a load; and
- (e) by way of detailed drawings, every alteration proposed to be made to any such sewer.

22. DLRL shall not commence the construction or renewal of any specified work to which paragraph 21 applies until the specified undertaker has given written approval of the plans so submitted.

23. Any approval of the specified undertaker required under paragraph 22—

- (a) may be given subject to reasonable conditions for any purpose mentioned in paragraph 24;
- (b) shall not be unreasonably withheld; and
- (c) shall be deemed to have been given if it is neither given nor refused within 56 days of the submission of plans for approval.

24. In relation to a work to which paragraph 21 applies, the specified undertaker may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its sewerage system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any sewer.

25. A specified work shall be constructed (and in the case of any temporary work removed) only in accordance with—

- (a) the plans submitted as aforesaid (and, in the case of plans relating to sewers approved, deemed to have been approved or settled by arbitration, as amended from time to time by agreement between DLRL and the specified undertaker); and
- (b) all reasonable requirements made by the specified undertaker for the alteration, or otherwise for the protection, of the apparatus, or for securing access thereto;

and the specified undertaker shall be entitled by its officer to watch and inspect the carrying out of the work.

26. If within 42 days after the submission to it of any plans under paragraph 20, in consequence of the works proposed by DLRL the specified undertaker reasonably requires the removal of any apparatus and gives written notice to DLRL of that requirement, the foregoing provisions of this Schedule shall have effect as if the removal of such apparatus had been required by the specified undertaker under paragraph 8.

27. Nothing in paragraphs 20 or 26 shall preclude DLRL from submitting at any time, or from time to time, but in no case less than 28 days before commencing the construction of any specified work, a new plan thereof in lieu of the plan previously submitted, and thereupon the provisions of those paragraphs shall apply to, and in respect of, such new plan save that the reference in paragraph 26 to 42 days shall be treated as a reference to 21 days.

28. DLRL shall not be required to comply with paragraph 20 in a case where it is necessary to carry out emergency works but, in such a case, it shall give to the specified undertaker notice so soon as reasonably practicable, and a plan of the works so soon as reasonably practicable thereafter, and shall comply with paragraph 25 so far as reasonably practicable in the circumstances.

29. Nothing in paragraph 28 shall entitle DLRL to carry out works to any apparatus but, upon receipt of notice from DLRL, the specified undertaker shall proceed to carry out such works as may be required with all reasonable despatch.

Co-operation

30. Where in consequence of the proposed construction of any of the authorised works, DLRL or a specified undertaker requires the removal of apparatus under paragraph 8 or a specified undertaker makes requirements for the protection or alteration of apparatus under paragraph 25, DLRL shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and each specified undertaker shall use its best endeavours to co-operate with DLRL for that purpose.

Access

31. If in consequence of the exercise of the powers of this Order the access to any apparatus is materially obstructed DLRL shall provide such alternative means of access to such apparatus as will enable the specified undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

Expenses

32. Subject to the provisions of the following paragraphs of this Schedule, DLRL shall repay to the specified undertaker the reasonable expenses incurred by the specified undertaker in, or in connection with—

- (a) the inspection, removal and relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus under any provision of this Schedule (including any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or exercise of statutory powers for such apparatus);
- (b) the cutting off of any apparatus from any other apparatus, or the making safe of any redundant apparatus in consequence of the exercise by DLRL of any power under this Order;
- (c) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the exercise by DLRL of any power under this Order; and
- (d) any other work or thing rendered reasonably necessary in consequence of the exercise by DLRL of any such power;

within a reasonable time of being notified by the specified undertaker that it has incurred such expenses.

33. There shall be deducted from any sum payable under paragraph 32 the value of any apparatus removed under the provisions of this Schedule, that value being calculated after removal.

34. If in pursuance of the provisions of this Schedule—

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

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dimensions, except where this has been solely due to using the nearest currently available type; or

- (b) apparatus (whether existing apparatus or alternative apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated;

and the placing of apparatus of that type or capacity or of those dimensions, or the placing of apparatus at that depth, as the case may be, is not agreed by DLRL or, in default of agreement, is not determined by arbitration to be necessary having regard, inter alia, to the nature of the authorised works, then, if such placing involves cost in the construction of the works under paragraphs 9 to 12 exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this paragraph would be payable to the specified undertaker by virtue of paragraph 32 shall be reduced by the amount of that excess.

35. For the purposes of paragraph 34—

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus except in a case where the apparatus as so extended serves a purpose (either additional to or instead of that served by the existing apparatus) which was not served by the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

36. An amount which apart from this paragraph would be payable to the specified undertaker in respect of works by virtue of paragraphs 32 to 35 shall, 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 specified undertaker any financial benefit by deferment of the time for renewal of the apparatus or of the system of which it forms part in the ordinary course, be reduced by the amount which represents that benefit as calculated in accordance with the Code of Practice entitled “Measures Necessary where Apparatus is Affected by Major Works (Diversionary Works)” and dated June 1992 and approved by the Secretary of State on 30th June 1992, as revised and re-issued from time to time.

37. In any case where work is carried out by DLRL pursuant to paragraphs 14 to 16 and, if such work had been carried out by the specified undertaker, the repayment made to the specified undertaker under paragraph 32 would fall to be reduced pursuant to paragraphs 34 to 36, the specified undertaker shall pay to DLRL such sum as represents the amount of that reduction.

Indemnity

38. If, by reason or in consequence of the construction, maintenance or failure of any of the authorised works, including any works carried out by DLRL pursuant to paragraph 14 or protective works required by a condition imposed under paragraph 23(a) or required under paragraph 25(b), or any subsidence resulting from any of those works, any damage shall be 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 other property of the specified undertaker, or there is any interruption in any service provided by the specified undertaker, DLRL shall repay the cost reasonably incurred by the specified undertaker in making good such damage, or restoring the supply, and shall—

- (a) make reasonable compensation to the specified undertaker for any loss sustained by it; and
- (b) indemnify the specified undertaker against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from, or incurred by, the specified undertaker;

by reason or in consequence of any such damage or interruption; and the fact that any act or thing may have been done by the specified undertaker on behalf of DLRL or in accordance with plans approved by the specified undertaker or in accordance with any requirement of the specified undertaker or under its supervision shall not, subject to paragraph 39, excuse DLRL from any liability under the provisions of this paragraph.

39. Nothing in paragraph 38 shall impose any liability on DLRL with respect to any damage or interruption to the extent that such damage or interruption is attributable to the neglect or default of the specified undertaker, its officers, servants, contractors or other agents.

40. The specified undertaker shall give to DLRL reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of DLRL which shall not be unreasonably withheld.

Exercise of safeguarding and survey powers

41. DLRL shall, so far as is reasonably practicable, so exercise the powers conferred by article 19 of this Order as not to obstruct or render less convenient the access to any apparatus.

42. DLRL shall not, in the exercise of the powers of section 11(3) of the 1965 Act, as applied by this Order, or of article 21 of this Order, make any trial holes which interfere with any apparatus without the consent of the specified undertaker (which shall not be unreasonably withheld).

Arbitration

43. Any difference arising between DLRL and a specified undertaker under this Schedule (other than a difference as to its meaning or construction) shall be determined by arbitration in the manner provided by article 55 of this Order and in determining any difference under this Schedule the arbitrator may, if he thinks fit, require DLRL to execute any temporary or other works so as to avoid, so far as may be reasonably possible, interference with the use of any apparatus.

Transfer of powers

44. DLRL shall give notice to every specified undertaker if any of the powers of DLRL under this Order are transferred to another person in accordance with article 48 of this Order and any such notice shall be given within 14 days of any such transfer becoming effective and shall describe or give (as appropriate)—

- (a) the nature of the functions to be transferred;
- (b) the extent of that transfer;
- (c) the geographical area to which the transfer relates;
- (d) the name and address of the transferee; and
- (e) the effective date of the transfer.

45. The obligation to give notice under paragraph 44 to a successor in title to a specified undertaker named in paragraph 1 shall only apply to the extent that DLRL has been informed by notice in writing by that named undertaker, or by a successor in title to that named undertaker, as the case may be, of the name and address of that successor in title.

Notices

46. Any notice in writing to be given by DLRL to a specified undertaker under this Schedule shall be deemed effectively given if sent by recorded delivery or by registered letter addressed to the registered office of that specified undertaker.

SCHEDULE 17

Article 46

FOR PROTECTION OF NAVIGATION INTERESTS

PART 1

GENERAL

1. In this Part of this Schedule—

“construction” includes execution, placing, alteration, replacement and reconstruction and “constructed” has a corresponding meaning; and

“Trinity House” means the Corporation of Trinity House of Deptford Strond.

Lights, etc., during tidal works

2.—(1) DLRL shall—

(a) during the whole time of the construction of a tidal work, exhibit every night from sunset to sunrise at or near the work any such lights, and

(b) take such other steps for the prevention of danger to navigation from the construction of a tidal work,

as Trinity House may from time to time reasonably direct.

(2) If DLRL fails to comply in any respect with a direction given under this paragraph it shall be guilty of an offence.

Damage, etc., to tidal works

3.—(1) In case of damage to or destruction or decay of a tidal work, or any part of a tidal work, during construction of the authorised works, DLRL shall as soon as reasonably practicable—

(a) give notice to Trinity House, and

(b) lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House may reasonably direct.

(2) If DLRL fails to notify Trinity House as required by this paragraph or to comply in any respect with a direction given under this paragraph it shall be guilty of an offence.

Offences

4.—(1) Where DLRL is guilty of an offence under paragraphs 2 or 3 above it shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) In proceedings for any such offence it shall be a defence for DLRL to show that it took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(3) If in any case the defence provided by sub-paragraph (2) involves the allegation that the commission of the offence was due to the act or default of another person, DLRL shall not, without the leave of the court, be entitled to rely on the defence unless, not later than 7 days before the hearing of the proceedings, it has served on the prosecution a notice in writing giving such information as was then in its possession identifying or assisting in the identification of the other person.

Saving

5. Nothing in this Part of this Schedule shall prejudice or derogate from the powers, rights and privileges of Trinity House.

PART 2

PROTECTION OF RoDMA AND THE PORT OF LONDON AUTHORITY

6. In this Part of this Schedule—

“the appropriate authority” means—

- (a) the Port of London Authority, in relation to any specified work constructed in, on, over or under so much of the River Thames as is within the limits of the Port of London (as defined in the Port of London Act 1968⁽⁴⁵⁾); or
- (b) RoDMA, in relation to any tidal work constructed in, on, over or under King George V Dock;

“construction” includes execution, placing, relaying, renewal and works of maintenance and, in its application to a specified work which includes or comprises any operation, means the carrying out of that operation and “construct” and “constructed” shall be construed accordingly;

“plans” shall include plans, sections, elevations, drawings, specifications and programmes and construction methods including in the case of the Port of London Authority and where applicable, such relevant hydraulic information about the River Thames as may be reasonably requested by the Authority;

“specified work” means so much of any authorised work as is in, on, over or under the River Thames or King George V Dock or involves cutting their banks and walls (including survey work under article 21) but does not include any work constructed or placed within the tunnels; and

“working day” means any day from Monday to Friday which is not a public holiday.

7. The provisions of this Part of this Schedule shall, unless otherwise agreed in writing between DLRL and the appropriate authority (or, in the case of paragraphs 13, 14 and 15, the Port of London Authority), have effect for the protection of the appropriate authority and users of the River Thames and King George V Dock (and, in the case of paragraphs 13, 14 and 15, the Port of London Authority).

Works

8.—(1) DLRL shall not commence any specified work until it has supplied to the appropriate authority such proper and sufficient plans for the same and such further particulars as may be available to it as the appropriate authority shall reasonably require and those plans have been approved in writing by the appropriate authority (such approval not to be unreasonably withheld).

(2) The appropriate authority shall notify DLRL within a period of 28 days starting with the date on which such plans of a specified work have been furnished to the appropriate authority, or such longer period as may be agreed in writing by the appropriate authority and DLRL, of its approval or disapproval of those plans.

(3) Any approval of the appropriate authority required under this paragraph may be given subject to such reasonable modifications, terms and conditions as the appropriate authority may make for the protection of—

(45) 1968 c. xxxii.

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- (a) vessel movement on, or the flow or regime of, the River Thames or King George V Dock (as appropriate), or
- (b) the use of its land, or the River Thames or King George V Dock (as appropriate) for the purposes of performing its statutory functions,

including any relocation, or provision, of works, new works, moorings, apparatus and equipment necessitated by the specified work, or any other works authorised by this Order, or their construction.

(4) If within a period of 28 days starting from the date on which it receives proper and sufficient plans of a specified work under sub-paragraph (1) the appropriate authority does not notify DLRL of its approval or disapproval of those plans, it shall be deemed to have disapproved of the said plans or such part of the plans as it has not approved.

(5) Where DLRL is aggrieved by—

- (a) the disapproval of the appropriate authority of any plans submitted under sub-paragraph (1),
- (b) any term or condition upon which the appropriate authority propose to approve the plans, or
- (c) any modification by the appropriate authority of the plans,

it may within 28 days from the date upon which the appropriate authority is deemed to have notified its disapproval of the plans or the date upon which the appropriate authority notifies DLRL of its decision, as the case may be, appeal to the Secretary of State for Transport.

(6) If an appeal to the Secretary of State is made, the following provisions shall apply—

- (a) the appeal shall be made by written notice stating the grounds of the appeal,
- (b) the appellant shall send a copy of the notice of appeal to the appropriate authority,
- (c) the appropriate authority may make written representations to the Secretary of State within 10 working days from receipt by it of the copy notice of appeal, and if it does so shall forthwith send a copy of its representations to the appellant,
- (d) the Secretary of State may confirm, vary or revoke a decision or requirement against which an appeal is made and may make any consequential amendments necessary, and
- (e) the Secretary of State may direct the appropriate authority or DLRL to give effect to the decision of the Secretary of State on the appeal and the appropriate authority or DLRL (as the case may be) shall forthwith comply with any direction given.

(7) DLRL shall carry out all operations for the construction of any specified work with all reasonable dispatch and to the reasonable satisfaction of the appropriate authority so that vessel movement on, or the flow or regime of the River Thames or King George V Dock (as appropriate), and the exercise of the appropriate authority's statutory functions, shall not suffer more interference than is reasonably practicable. The appropriate authority shall be entitled at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey those operations and DLRL shall provide all reasonable facilities to enable such inspection and survey to take place.

(8) If any specified work is constructed otherwise than in accordance with the requirements of this Part of this Schedule or with any term, modification or condition in an approval pursuant to sub-paragraph (3), the appropriate authority may by notice in writing require DLRL at DLRL's own expense to comply with the requirements of this Part of this Schedule or that term, modification or condition. If DLRL does not do so or is unable to do so then the appropriate authority may in writing require DLRL to remove, alter or pull down the specified work and, where the specified work is removed, to restore the site of that work to its condition prior to the construction of the specified work, to such an extent and within such limits as the appropriate authority think proper.

(9) DLRL shall, upon completion of the construction of any part of an authorised work, remove as soon as is practicable any tidal work and materials for such tidal work carried out or placed only

for the purposes of that part of the authorised work, or that part of the authorised work and another part or parts which have already been completed, and shall make good the site to the reasonable satisfaction of the appropriate authority.

(10) DLRL shall not—

- (a) deposit in or allow to fall or be washed into the River Thames or King George V Dock any gravel, soil or other material except so far as may be necessary or unavoidable in the construction of a specified work, or to the extent permitted by any approval of a specified work;
- (b) discharge or allow to escape either directly or indirectly into the River Thames or King George V Dock any offensive or injurious matter in suspension or otherwise; or
- (c) discharge into the River Thames or King George V Dock any water by any watercourse, public sewer or drain without the consent of the appropriate authority and such consent may be given subject to such terms and conditions as the appropriate authority may reasonably impose but shall not be unreasonably withheld.

(11) If a specified work is abandoned or falls into decay, the appropriate authority may by notice in writing require DLRL either to repair or restore the specified work, or any part of it, or to remove the specified work and restore the site of that work to its condition prior to the construction of the specified work, to such an extent and to such limits as the appropriate authority think proper.

(12) If a work consisting partly of a specified work and partly of works on or over land above the level of high water spring tides is abandoned or falls into decay and that part of the works on or over land above the level of high water springs is in such condition as to interfere or cause reasonable apprehension that it may interfere with the right of navigation on the River Thames or other public rights over the foreshore, the Port of London Authority may include that part of the works or any portion thereof in any notice under sub-paragraph (11).

(13) If on the expiration of such reasonable period as may be specified in a notice under sub-paragraph (11) above the work specified therein has not been completed to the satisfaction of the appropriate authority, the appropriate authority may undertake that work and any expenditure reasonably incurred by them in so doing shall be recoverable from DLRL.

(14) No part of Work No. 1 shall be constructed under the River Thames as cut and cover tunnel.

9.—(1) This paragraph applies in relation to any siltation or scouring of the River Thames which is wholly or partly caused by a specified work during the period beginning with the start of the carrying out or construction of that work and ending with the expiration of 10 years after the date on which it is completed.

(2) If—

- (a) any part of the River Thames becomes subject to siltation or scouring;
- (b) such siltation and scouring is siltation and scouring to which this paragraph applies; and
- (c) for the safety of navigation or in the interest of persons using the River Thames or for the protection of works in the River Thames, such siltation and scouring should in the reasonable opinion of the appropriate authority be removed or made good,

DLRL shall pay to the appropriate authority (in the manner set out in sub-paragraph (4)) any additional expense to which the appropriate authority may reasonably be put in dredging the River Thames to remove the siltation or in making good the scouring, in so far as (in either case) it is attributable to the specified work.

(3) DLRL shall pay to the appropriate authority the costs reasonably incurred by them which they would not otherwise have incurred in establishing whether siltation or scouring to which this paragraph applies has occurred.

(4) DLRL shall, on application by the appropriate authority, make to them one or more interim payments on account of any sums required to be paid under sub-paragraph (2), being payments of such amounts and made at such times as are reasonable for meeting the current expenditure of the appropriate authority in removing the siltation or making good the scouring.

Facilities for navigation

10.—(1) DLRL shall mark and light a specified work in accordance with such reasonable directions as the appropriate authority shall give from time to time.

(2) DLRL shall provide at any specified work, or shall afford reasonable facilities at such work (including an electricity supply), for the appropriate authority to provide at DLRL's cost, from time to time, such navigational lights, signals, radar or other apparatus for the benefit, control and direction of navigation as the appropriate authority may deem necessary by reason of the construction and presence of the specified work and shall ensure access remains available to them during and following construction of the specified work.

General protection

11.—(1) Subject to article 4(8) and to sub-paragraph (2) the exercise in, under or over the River Thames and King George V Dock by DLRL of any of its functions under this Order shall be subject to any enactment relating to or made by the appropriate authority (including byelaws or directions of the appropriate authority and the exercise by the appropriate authority or its harbourmaster or manager of any powers and functions conferred on it or him by or under any enactment) but in carrying out its functions under any such enactment the appropriate authority shall at all times act reasonably having regard to the provisions and effect of this Order.

(2) Notwithstanding any such enactment mentioned in sub-paragraph (1), the Port of London Authority will not do anything, or permit anything to be done, to or affecting the tunnels or any land vested in DLRL in connection with the tunnels, without the consent in writing of DLRL.

12.—(1) DLRL shall be responsible for and make good to the appropriate authority all costs, charges, damages and expenses which may reasonably be incurred by the appropriate authority—

- (a) by reason of the construction of a specified work or failure thereof, or
- (b) by reason of any act or omission of DLRL or of any persons in its employ or of its contractors or agents or others whilst engaged upon the construction of a specified work or dealing with any failure of such work,

and DLRL shall indemnify the appropriate authority from and against all claims and demands arising out of or in connection with the specified work or any such failure, act or omission and the fact that any act or thing may have been done by the appropriate authority on behalf of DLRL or done by DLRL, any person in its employ or its contractors or agents in accordance with plans or particulars submitted to or modifications or conditions specified by the appropriate authority, or in a manner approved by the appropriate authority, or under its supervision or the supervision of its duly authorised representative shall not (if it was done or required without negligence on the part of the appropriate authority or its duly authorised representative, or any person in its employ or its contractors or agents) excuse DLRL from liability under the provisions of this indemnity.

(2) The appropriate authority shall give DLRL reasonable notice of any such claim or demand as is referred to in sub-paragraph (1) and no settlement or compromise thereof shall be made without the prior consent of DLRL.

13.—(1) DLRL shall not in the exercise of the powers conferred by this Order prevent such access as may be reasonably required by the Port of London Authority for the purpose of maintaining the

works under the entrance lock to King George V Dock specified as item 12 in Schedule 7 to the Port of London Act 1968 (“the relevant structures”).

(2) The Port of London Authority agrees that except in an emergency it will not maintain those works during the period when DLRL may be using that lock in such a way as would render the lock inoperable or unusable.

(3) Paragraph 12 shall extend to any costs, charges, damages and expenses reasonably incurred by, and any claim and demands made against, the Port of London Authority in respect of damage caused to the relevant structures by reason of the construction of a specified work or any such failure, act or omission as is referred to in that paragraph.

14. DLRL shall not exercise the powers of article 30(2) in relation to the land numbered 10 on the deposited plans except with the consent of the Port of London Authority, which shall not be unreasonably withheld but which may be given subject to reasonable conditions.

15.—(1) In constructing Works Nos 1 and 5 DLRL will use its reasonable endeavours to avoid disturbing any mooring or anchor inserted into the bed of the River Thames.

(2) If such a mooring or anchor is located in a position that physically obstructs the construction of Work No. 1 or 5, DLRL may remove so much of the mooring or anchor that comprises the obstruction and thereafter the Port of London Authority will remove so much of the remainder of the mooring or anchor that lies above the uppermost surface of the bed of the River Thames but it will leave in position and not interfere with that part of the mooring or anchor lying between that point and the outer extremity of Work No. 1 or 5 (as the case may be).

(3) DLRL will pay to the Port of London Authority the costs reasonably incurred by it in removing, pursuant to sub-paragraph (2), that part of the remainder of the mooring or anchor mentioned in that sub-paragraph which the Authority is obliged to remove and replacing that mooring or anchor elsewhere and if the mooring removed is a screw mooring which is used in conjunction with a second screw mooring to moor vessels fore and aft those costs shall also include the cost of removing and replacing elsewhere the second screw mooring if it is not required to be removed pursuant to sub-paragraph (2).

(4) Following notice to the Port of London Authority given pursuant to and in accordance with sub-paragraph (5), the Authority will not insert any mooring or anchor into the bed of the River Thames in any position where—

- (a) the face of the base of the anchor or mooring that is nearest to any tunnel structure forming part of Work No. 1 or 5 would be within a circular zone having a radius of 9 metres centred on the centre point of the tunnel structure in cross-section; or
- (b) a line drawn at 45 degrees above the plane of horizontal commencing from and touching the face referred to in paragraph (a) would enter that zone.

(5) At any time after this Order has been made DLRL may give notice to the Port of London Authority that DLRL is intending to construct the authorised works and that accordingly it requires the restrictions in sub-paragraph (4) to take effect. Any such notice shall be accompanied by a plan on a scale of not less than 1:2500 and sections and cross-sections on scales of not less than 1:100 showing the intended situation and levels of Works Nos. 1 and 5 where any part of them is intended to pass under the River Thames.

(6) If the restrictions in sub-paragraph (4) are brought into effect by a notice given pursuant to and in accordance with sub-paragraph (5), they shall cease to have effect if the authorised works are not subsequently commenced within 5 years of the coming into force of this Order.

(7) Following notice to the Port of London Authority given by DLRL at any time after construction of the authorised works has been commenced, the Port of London Authority will not thereafter remove so much of any mooring or anchor that is within the bed of the River Thames at

Status: This is the original version (as it was originally made).

that time if there is any prospect that in doing so the zone mentioned in sub-paragraph (4) could be disturbed.

(8) If by virtue of sub-paragraph (4) the Port of London Authority is unable to replace an existing screw mooring in the same place, DLRL will pay to the Authority the costs reasonably incurred by it in removing and replacing any second screw mooring which is used in conjunction with that mooring to moor vessels fore and aft.

16. Completion of Work No.1 DLRL shall supply to the Port of London Authority a plan on a scale of not less than 1:2500 and sections and cross-sections on scales of not less than 1:100 showing the situation and levels of Work No.1 where it passes under the River Thames.

17. Any difference arising between DLRL and the appropriate authority under this Part of this Schedule (other than a difference as to the meaning or construction of this Part of this Schedule or any difference subject to an appeal to the Secretary of State under paragraph 8(5)) shall be referred to and settled by arbitration in accordance with article 55.

SCHEDULE 18

Article 47

TRAFFIC REGULATION: PROHIBITION OF WAITING

<i>(1)</i> <i>Road</i>	<i>(2)</i> <i>Side</i>	<i>(3)</i> <i>Description</i>	<i>(4)</i> <i>Notes</i>
In the London Borough of Greenwich			
Parry Place	East and West	Southwards from its junction with Spray Street	Replaces current provision of 9 parking bays (parking places nos. 30 and 31) and waiting restriction order

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Docklands Light Railway Limited (DLRL) to construct an extension to the Docklands Light Railway from North Woolwich in the London Borough of Newham to Woolwich town centre in the London Borough of Greenwich, passing under the River Thames and, for that purpose, compulsorily or by agreement to acquire land and rights in land. It contains a number of protective provisions for the benefit of affected undertakings.

A copy of the deposited plans, the deposited sections, the book of reference and the open space and exchange land plan mentioned in this Order may be inspected free of charge during working hours at the offices of Docklands Light Railway Limited, P.O. Box 154, Castor Lane, Poplar, London E14 0DX.

