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## STATUTORY INSTRUMENTS

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# 2013 No. 1933

## The Leeds Railway Station (Southern Entrance) Order 2013

### PART 1

#### PRELIMINARY

##### Citation and commencement

1. This Order may be cited as the Leeds Railway Station (Southern Entrance) Order 2013 and comes into force on 22nd August 2013.

##### Commencement Information

II Art. 1 in force at 22.8.2013, see [art. 1](#)

##### Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(1);

“the 1965 Act” means the Compulsory Purchase Act 1965(2);

“the 1980 Act” means the Highways Act 1980(3);

“the 1981 Act” means the Acquisition of Land Act 1981(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 1993 Act” means the Railways Act 1993(8);

“the 2003 Act” means the Communications Act 2003(9);

“the Aire and Calder Navigation” means that part of the River Aire comprised in the waterway specified in Part 1 of Schedule 12 to the Transport Act 1968(10);

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

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- (1) 1961 c. 33.  
(2) 1965 c. 56.  
(3) 1980 c. 66.  
(4) 1981 c. 67.  
(5) 1984 c. 27.  
(6) 1990 c. 8.  
(7) 1991 c. 22.  
(8) 1993 c. 43.  
(9) 2003 c. 21.  
(10) 1968 c. 73.

**Status:** Point in time view as at 22/08/2013.

**Changes to legislation:** There are outstanding changes not yet made by the [legislation.gov.uk](https://legislation.gov.uk) editorial team to *The Leeds Railway Station (Southern Entrance) Order 2013*. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

“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 1980 Act;

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

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

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

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

“the limits of deviation” means the limits of deviation for the scheduled works shown on the deposited plans;

“the limits of land to be temporarily used” means the land so shown and described on the deposited plans;

“the limit of land to be acquired or used” means the land so shown and described on the deposited plans;

“the limits of land to be temporarily used for the oversailing of equipment” means the land so shown on and described on the deposited plans;

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

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

“Network Rail” means Network Rail Infrastructure Limited (Company No. 02904587) whose registered office is at Kings Place, 90 York Way, London N1 9AG;

“the promoter” means West Yorkshire Passenger Transport Executive and Network Rail together, or either of them;

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

“owner”, in relation to land, has the same meaning as in the 1981 Act;

“oversailing of equipment” means the construction and operation of craneage required in connection with the construction of the authorised works;

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

“public utility undertakers” has the same meaning as in the 1980 Act;

“the relevant part of the waterway” means that part of the Aire and Calder Navigation as is within the limits of deviation and the limits of land to be temporarily used;

“the scheduled works” means the works specified in Schedule 1 (scheduled works) 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 3 of the 1991 Act;

“the traffic regulation and rights of way plan” means the plan certified by the Secretary of State as the traffic regulation and rights of way plan for the purposes of this Order;

“the tribunal” means the Upper Tribunal;

“the Trust” means the Canal & River Trust;

“vessel” includes any part of a vessel; and

“watercourse” means the relevant part of the waterway and any drains, canals, cuts, culverts, sluices, sewers and passages through which water flows except a public sewer or drain.

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

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

#### Commencement Information

**I2** Art. 2 in force at 22.8.2013, see [art. 1](#)

### Application of the 1991 Act

**3.**—(1) Works executed under this Order in relation to a highway which is, or forms part of a carriageway are to be treated for the purposes of Part 3 of the 1991 Act (street works in England and Wales) as major transport works if—

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

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

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

(3) The provisions of the 1991 Act mentioned in paragraph (4) which, together with other provisions of that Act, apply in relation to the execution of street works and any regulations made, or code of practice issued or approved under, those provisions apply (with the necessary modifications) in relation to the stopping up, alteration or diversion of a street of a temporary nature by the promoter 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);

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section 59 (general duty of street authority to co-ordinate works);  
 section 60 (general duty of undertaker 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) Sections 54 and 55 of the 1991 Act as applied by paragraph (3) have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

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

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

#### Commencement Information

**I3** Art. 3 in force at 22.8.2013, see [art. 1](#)

## PART 2 WORKS PROVISIONS

### *Principal Powers*

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

4.—(1) The promoter may construct and maintain the scheduled works.

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

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

- (a) construct and maintain such offices and other buildings, yards, machinery, plant, apparatus and other works and conveniences as the promoter thinks fit;
- (b) make, provide and maintain all such approaches, lifts, stairs, escalators, ramps, passages, means of access, shafts and stagings as the promoter thinks fit;
- (c) make and maintain junctions and communications (including the provision of steps or ramps for the use of persons on foot) with any highway or access way intersected or interfered with by, or contiguous to, any of those works, and widen or alter any highway or

access way for the purpose of connecting it with any of those works or another highway, or of crossing under or over the highway or access way;

- (d) construct, provide and maintain all such embankments, aprons, abutments, retaining walls, wing walls, culverts and other works as may be necessary or convenient;
- (e) alter or remove any structure erected upon any highway or adjoining land;
- (f) alter the position of apparatus, including mains, sewers, drains, pipes, cables and street furniture;
- (g) carry out and maintain landscaping and other permanent mitigation works to mitigate any adverse effects of the construction, maintenance or operation of the scheduled works including the execution of works to alter the layout of streets; and
- (h) carry out and maintain works for the benefit or protection of premises affected by the scheduled works.

(4) Subject to paragraph (5), the promoter may carry out and maintain such other works (of whatever nature) as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works.

(5) Paragraphs (3) and (4) only authorise the carrying out or maintenance of works outside the limits of deviation if such works are carried out—

- (a) on land specified in columns (1) and (2) of Schedule 2 (acquisition of certain lands for ancillary works) for the purpose specified in relation to that land in column (3) of that Schedule; and
- (b) on land specified in columns (1) and (2) of Schedule 10 (land of which temporary possession may be taken) for the purposes specified in column (3) of that Schedule.

(6) In constructing the scheduled works, the promoter may, regardless of any enactment that provides otherwise, do either or both of the following—

- (a) use such parts of the original viaduct as it may require for the purposes of the authorised works; and
- (b) take down and remove such parts of the original viaduct as the promoter does not require.

(7) The following enactments do not apply to anything done under this Order—

- (a) section 109 of the Water Resources Act 1991(11);
- (b) section 23 of the Land Drainage Act 1991(12);
- (c) Part 4 of the Eels (England and Wales) Regulations 2009(13); and
- (d) any byelaws made under the above enactments.

(8) Paragraph (7) is subject to Schedule 16 (for the protection of the Environment Agency).

(9) In this article “the original viaduct” means that part of the existing viaduct at Leeds railway station carrying the railways of Network Rail into the station.

#### **Commencement Information**

**14** Art. 4 in force at 22.8.2013, see [art. 1](#)

(11) 1991 c. 57.

(12) 1991 c. 59.

(13) S.I. 2009/3344.

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### Power to deviate

5.—(1) In constructing or maintaining any of the scheduled works, the promoter may subject to paragraph (2)—

- (a) deviate laterally from the lines or situations shown on the deposited plans to the extent of the limits of deviation for that work; and
- (b) deviate vertically from the levels shown on the deposited sections—
  - (i) to any extent not exceeding 2 metres upwards; or
  - (ii) to any extent not exceeding 2 metres downwards.

(2) Notwithstanding paragraph (1)(b), the promoter may deviate vertically from the levels shown on the deposited sections to any extent downwards in respect of the vertical piles supporting Work No. 1.

#### Commencement Information

**I5** Art. 5 in force at 22.8.2013, see [art. 1](#)

### Streets

### Power to execute street works

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

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

(2) This article is subject to paragraph 3 of Schedule 12 (provisions relating to statutory undertakers etc.).

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

#### Commencement Information

**I6** Art. 6 in force at 22.8.2013, see [art. 1](#)

### Power to alter layout etc. of streets

7.—(1) The promoter may alter the layout of, and carry out other ancillary works in the street specified in column (1) of Schedule 4 (street subject to alteration of layout) in the manner specified in relation to that street in column (2) of that Schedule.

(2) Without limiting the scope of the specific powers conferred by article 4 (power to construct and maintain works) or paragraph (1) but subject to paragraph (3) the promoter may, for the purpose of constructing, maintaining or using the authorised works, alter the layout of the street specified in column (1) of Schedule 4 and the layout of any street having a junction with such a street; and, without limiting the scope of that power, the promoter may—

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- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footway, or verge within the street;
  - (b) alter the level or increase the width of any such kerb, footway, or verge;
  - (c) reduce the width of the carriageway of the street by forming a reserved area in the street or by carrying out other works for the purpose of regulating the passage of vehicles along the street;
  - (d) carry out works for the provision, alteration or removal of parking places and loading bays;
  - (e) carry out traffic calming works which are of a description prescribed in regulation 3 of the Highways (Traffic Calming) Regulations 1999(14) and which are carried out in compliance with those Regulations; and
  - (f) carry out works to the carriageway of the street for the purpose of deterring or preventing vehicles from passing along the street.
- (3) The powers in paragraph (2) must not be exercised without the consent of the street authority, but such consent is not to be unreasonably withheld.

**Commencement Information**

I7 Art. 7 in force at 22.8.2013, see [art. 1](#)

**Stopping up of streets**

8.—(1) Subject to the provisions of this article, the promoter may, in connection with the construction of the authorised works, stop up the street specified in columns (1) and (2) of Schedule 5 (street to be stopped up for which a substitute to be provided) to the extent specified, in column (3) of that Schedule.

(2) The street specified in columns (1) and (2) of Schedule 5 must not be wholly or partly stopped up under this article unless—

- (a) the new street to be substituted for it, which is specified in column (4) 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 for the passage of such traffic as could have used the street to be stopped up is first provided and then maintained by the promoter, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).

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

(4) This article is subject to paragraph 2 of Schedule 12 (provisions relating to statutory undertakers etc.).

**Commencement Information**

I8 Art. 8 in force at 22.8.2013, see [art. 1](#)

(14) S.I. 1999/1026.

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### Temporary stopping up of streets

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

- (a) divert the traffic from the street; and
- (b) subject to paragraph (2), prevent all persons from passing along the street.

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

(3) Without limitation on the scope of paragraph (1), the promoter may exercise the powers conferred by this article in relation to the streets specified in columns (1) and (2) of Schedule 6 (streets to be temporarily stopped up) to the extent specified in column (3) of that Schedule.

(4) The promoter must not exercise the powers conferred by this article—

- (a) in relation to any street specified as mentioned in paragraph (3) without first consulting the street authority; and
- (b) in relation to any other street without the consent of the street authority which may attach reasonable conditions to any consent, but such consent must not be unreasonably withheld.

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

(6) Any street subject to the exercise of the powers conferred by paragraph (1) may be used as a temporary working site for the purposes of the construction of the authorised works and the promoter may erect on any street such temporary works including temporary buildings and storage facilities as the promoter considers convenient and necessary.

(7) In Schedule 6—

“Granary Wharf Piazza” means the lands numbered 105, 106, 109, 110, 111, 112, 117 and 118 on the deposited plans.

#### Commencement Information

**I9** Art. 9 in force at 22.8.2013, see [art. 1](#)

### Access to works

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

- (a) form and lay out means of access, or improve existing means of access, in the locations specified in columns (1) and (2) of Schedule 7 (access to works) at or about the points marked “A” on the deposited plans; and
- (b) form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the promoter reasonably requires for the purposes of the authorised works, as may be approved by the highway authority, but such approval must not be unreasonably withheld.

#### Commencement Information

**I10** Art. 10 in force at 22.8.2013, see [art. 1](#)



## Construction and maintenance of new or altered streets

**11.**—(1) Any street (other than any part of Work No. 1 and 1A) to be constructed under this Order must be completed to the reasonable satisfaction of the highway authority and must be maintained by and at the expense of the promoter for a period of 12 months from its completion and from the expiry of that period by and at the expense of the highway authority.

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

(3) In any action against the promoter in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (regardless of any other defence or the application of the law relating to contributory negligence) to prove that the promoter had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

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

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

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

### Commencement Information

**III** Art. 11 in force at 22.8.2013, see [art. 1](#)

## Agreements with street authorities

**12.**—(1) A street authority and the promoter may enter into agreements with respect to—

- (a) the construction of any new street (including any structure carrying the street over or under a railway) under the powers conferred by this Order;
- (b) the maintenance of the structure of any bridge or tunnel carrying a street over or under a railway;
- (c) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
- (d) the execution in the street of any of the works referred to in article 6(1) (power to execute street works).

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

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

#### Commencement Information

**I12** Art. 12 in force at 22.8.2013, see [art. 1](#)

### *Supplemental powers*

#### **Discharge of water**

**13.**—(1) The promoter 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 Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the exercise of the powers conferred by paragraph (1) to connect to or use a public sewer or drain is to be determined as if it were a dispute under section 106 of the Water Industry Act 1991(**15**).

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

- (4) The promoter must not make any opening into any public sewer or drain except—
  - (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and
  - (b) where that person has been given the opportunity to supervise the making of the opening.

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

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

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2010(**16**).

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

- (9) In this article—
  - (a) “public sewer or drain” means a sewer or drain which belongs to the Environment Agency, a local authority or a sewerage undertaker; and
  - (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(**17**) have the same meaning as in that Act.

**(15)** 1991 c. 56.

**(16)** S.I. 2010/675.

**(17)** 1991 c. 57.

### Commencement Information

**I13** Art. 13 in force at 22.8.2013, see [art. 1](#)

### Protective works to buildings, roads and apparatus of a statutory undertaker

**14.**—(1) Subject to the following provisions of this article, the promoter may at its own expense and from time to time carry out such protective works to—

- (a) any building; or
- (b) any road; or
- (c) any apparatus of a statutory undertaker,

lying within the Order limits as the promoter considers to be necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the construction in the vicinity of the building, road or apparatus of any part of the authorised works; or
- (b) after the completion of the construction of that part of the authorised works in the vicinity of the building, road or apparatus 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 the promoter may, subject to paragraph (5), enter and survey any building, go onto and survey any road or access and survey any apparatus falling within paragraph (1) and any land within the curtilage of the building or in which the apparatus is located.

(4) For the purpose of carrying out protective works under this article to a building, road or apparatus the promoter may—

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

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building, road or apparatus;
- (b) a right under paragraph (3) to enter a building, go onto a road or access apparatus and land within the curtilage of the building or in which the apparatus is located;
- (c) a right under paragraph (4)(a) to enter a building, go onto a road or access apparatus and land within the curtilage of the building or in which the apparatus is located; or
- (d) a right under paragraph (4)(b) to enter land,

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

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land or owners of the road or the apparatus concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land, go onto a road or access apparatus to be referred to arbitration under article 51 (arbitration).

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

(8) Where—

- (a) protective works are carried out under this article to a building or road or apparatus falling within paragraph (1); and
- (b) within the period of 5 years beginning with the day on which the part of the authorised works constructed in the vicinity of the building, road or apparatus is first opened for use it appears that the protective works are inadequate to protect the building, road or apparatus against damage caused by the construction or operation of that part of the authorised works,

the promoter must compensate the owners and occupiers of the building or road or apparatus for any loss or damage sustained by them.

(9) Without affecting article 50 (no double recovery) nothing in this article relieves the promoter from any liability to pay compensation under section 10(2) of the 1965 Act.

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

(11) This article shall not apply to any land within the limits of land to be temporarily used for the oversailing of equipment.

(12) In this article—

“protective works” in relation to a building, road or apparatus means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building, road or apparatus by the construction, maintenance or operation of the authorised works; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building, road or apparatus by the construction, maintenance or operation of the authorised works,

“road” includes any structures supporting the road.

#### **Commencement Information**

**I14** Art. 14 in force at 22.8.2013, see [art. 1](#)

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

**15.—**(1) The promoter may for the purposes of this Order—

- (a) survey or investigate any land shown within the Order limits or which may be affected by the authorised works;
- (b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions as the promoter thinks fit on the land to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on the land;
- (d) place on, leave on and remove from the land apparatus for use in connection with the surveying and investigation of land and making of trial holes; and
- (e) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (d).

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

(3) Any person entering land under this article on behalf of the promoter—

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

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

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

but such consent must not be unreasonably withheld.

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

(6) Nothing in this article overrides the requirement for scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979 (18).

(7) If either a highway authority or a street authority fails to notify the promoter of its decision within 14 days of receiving an application for consent under paragraph (4), that authority is deemed to have granted consent.

(8) This article does not apply to any land within the limits of land to be temporarily used for the oversailing of equipment.

#### **Commencement Information**

**115** Art. 15 in force at 22.8.2013, see [art. 1](#)

### *Navigation*

#### **Temporary closure of, and works in the Aire and Calder Navigation**

**16.**—(1) The promoter may, in connection with the construction of the authorised works—

- (a) temporarily interfere with the relevant part of the waterway by constructing or maintaining caissons, cofferdams or other temporary works at any point within the relevant part of the waterway as the promoter considers necessary or expedient;
- (b) temporarily moor or anchor barges or other vessels or craft in the relevant part of the waterway;
- (c) load or unload into and from such barges, other vessels or craft as are referred to in subparagraph (b) equipment, machinery, soil and any other materials;
- (d) temporarily close to navigation the relevant part of the waterway; and
- (e) temporarily remove the water from the relevant part of the waterway that is so interfered with or closed.

(2) During the period of any closure referred to in paragraph (1)(d), all rights of navigation and other rights relating to, and any obligations of the Trust to manage, the relevant part of the waterway so closed are to be suspended and unenforceable against the Trust.

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- (3) The power conferred by paragraph (1) must be exercised in a way which secures—
- (a) that no more of the relevant part of the waterway is closed to navigation at any time than is necessary in the circumstances; and
  - (b) that, if complete closure to navigation of the relevant part of the waterway becomes necessary, reasonable steps are taken to secure that the period of closure is kept to a minimum and that the minimum obstruction, delay or interference is caused to vessels or craft which may be using or intending to use the part so closed.

(4) Any person who suffers loss or damage as a result of the suspension or interruption of any right under this article is entitled to compensation to be determined, in case of dispute, under Part I of the 1961 Act.

#### Commencement Information

**I16** Art. 16 in force at 22.8.2013, see [art. 1](#)

### Extinguishment of navigation rights etc. in the Aire and Calder Navigation

**17.**—(1) Without limitation on the scope of section 105(5) and (6) of the Transport Act 1968<sup>(19)</sup> any rights of navigation over the relevant part of the waterway whether public or private and however arising are extinguished to the extent that such rights are adversely affected by reason of the construction, use and maintenance of the authorised works.

(2) The promoter must pay compensation to any person who suffers damage or loss by reason of the extinguishment of rights of navigation by virtue of paragraph (1) and any question as to the amount of compensation so paid is to be determined by the tribunal.

#### Commencement Information

**I17** Art. 17 in force at 22.8.2013, see [art. 1](#)

### Navigation etc. in vicinity of scheduled works

- 18.**—(1) Any person who, other than in an emergency or with some other reasonable cause—
- (a) moors a vessel to any part of the scheduled works without the consent of the promoter;
  - (b) allows any vessel to drift in the vicinity of the scheduled works, except for the purpose of passing through the lock gates or waiting to do so; or
  - (c) moors a vessel in the vicinity of the scheduled works so as to cause an obstruction to the access to any part of the scheduled works,

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

(2) In this article—

“in the vicinity of the scheduled works” means on or in that part of the relevant waterway within the limits of deviation; and

“lock gates” means the lock gates to the entrance to the Leeds and Liverpool Canal and shown marked by the point “X” on the deposited plans.

(19) 1968 c. 73.

### Commencement Information

**I18** Art. 18 in force at 22.8.2013, see [art. 1](#)

### Removal of vessels

**19.**—(1) Subject to paragraphs (2) and (3), whenever any vessel—

- (a) is sunk, stranded or abandoned within the relevant part of the waterway; or
- (b) left or moored within the relevant part of the waterway without lawful authority,

the promoter may raise, remove, store or otherwise dispose of a vessel to which this paragraph applies where (except in an emergency) it has given not less than 21 days' written notice to the owner of the vessel, unless it is not practicable after reasonable inquiry to ascertain the name and address of the owner.

(2) Where the promoter proposes to raise, remove, store or otherwise dispose of a vessel to which paragraph (1) applies, the promoter must first give the Trust not less than 28 days' written notice of its intention to do so.

(3) Where the promoter has given such notice as referred to in paragraph (2) and where—

- (a) it is within the powers of the Trust to deal with the vessel; and
- (b) the promoter having given not less than 28 days' written notice to the Trust, is informed by the Trust within that time that the Trust intends to itself raise, remove, store or otherwise dispose of a vessel to which paragraph (1) applies; and
- (c) the Trust does raise, remove, store or otherwise dispose of a vessel to which paragraph (1) applies within a reasonable time afterwards,

then the promoter, may not raise, remove, store or otherwise dispose of a vessel to which paragraph (1) applies except in a case of an emergency, in which case the promoter is not required to give the Trust the notice in paragraph (2) provided that the Trust is informed of the action as soon as possible afterwards.

(4) Any notice given by the promoter under paragraph (1) must—

- (a) identify the vessel in respect of which the notice is served and its approximate location;
- (b) state that if the owner fails to raise and remove the vessel before the expiry of the period specified in the notice, the promoter may raise and remove the vessel and recover all expenses reasonably incurred in doing so; and
- (c) indicate that there is a right to refer the matter to arbitration under article 20 (arbitration in respect of removal of vessels).

(5) The promoter may recover from the owner of any such vessel all expenses reasonably incurred by the promoter in respect of the raising, removal, storage or disposal of the vessel or in raising, removing, storing or disposing of any goods raised or removed from the vessel.

(6) In any proceedings by the promoter against a person served with a notice under paragraph (1) for the recovery of any expenses which the promoter is entitled to recover from that person under paragraph (5), it is not open to that person to raise any question which could have been raised on a referral to arbitration under article 51 (arbitration).

(7) Subject to paragraph (8), if any vessel to which paragraph (1) applies is not, within 6 weeks of its removal by the promoter, proved to the promoter's satisfaction to belong to any claimant, the vessel, together with any such goods, is to vest in the promoter.

(8) If within 12 months of its removal a claim is made to the vessel by a person who subsequently proves to the satisfaction of the promoter that the person was the owner of the vessel, or has

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become the owner since the vessel was sunk, stranded, abandoned, left or moored as mentioned in paragraph (1), then the promoter must—

- (a) if the vessel is unsold, permit that person to retake it with any goods on the vessel upon payment of the expenses referred to in paragraph (5); or
  - (b) if the vessel and the goods on the vessel have been sold, pay to that person the amount of the proceeds of such sale after deducting the said expenses, and in case such proceeds are insufficient to reimburse the promoter those expenses the deficiency may be recovered from that person by the promoter.
- (9) In this article—
- (a) “goods” means articles and property of every description found on any vessel to which paragraph (1) applies; and
  - (b) an “owner”, in relation to any vessel sunk, stranded, abandoned, left or moored as mentioned in paragraph (1), means as the case may be, either—
    - (i) the owner of the vessel at the time of its sinking, stranding, abandonment, leaving or mooring; or
    - (ii) a person who has become the owner of a vessel since the sinking, stranding abandonment, leaving or mooring of the vessel referred to in paragraph (1).

#### Commencement Information

**I19** Art. 19 in force at 22.8.2013, see [art. 1](#)

#### Arbitration in respect of removal of vessels

**20.**—(1) Any person served with a notice by the promoter under article 19 (removal of vessels) may, within 21 days of service of the notice, serve a counter-notice on the promoter disputing the notice and stating that—

- (a) the vessel is not sunk, stranded or abandoned in the relevant part of the waterway; or
  - (b) there has been some informality, defect or error in, or in connection with, the notice,
- and any dispute under this article must be determined in accordance with article 51 (arbitration).

(2) If and so far as a dispute under this article is based on the ground of some informality, defect or error in, or in connection with, the notice, the arbitrator must dismiss the dispute if the arbitrator is satisfied that the informality, defect or error was not a material one.

(3) On the hearing of the dispute the arbitrator may confirm or set aside the notice.

#### Commencement Information

**I20** Art. 20 in force at 22.8.2013, see [art. 1](#)



## PART 3

### ACQUISITION AND POSSESSION OF LAND

#### *Powers of acquisition*

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

**21.**—(1) The promoter may acquire compulsorily—

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

and may use any land so acquired for those purposes or for any other purposes that are ancillary to the promoter's undertaking.

(2) This article is subject to article 25 (new rights only to be acquired in certain lands) and article 27 (temporary use of land for construction of works).

#### **Commencement Information**

**I21** Art. 21 in force at 22.8.2013, see [art. 1](#)

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

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

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

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

#### **Commencement Information**

**I22** Art. 22 in force at 22.8.2013, see [art. 1](#)

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

**23.**—(1) The Compulsory Purchase (Vesting Declarations) Act 1981<sup>(20)</sup> applies as if this Order were a compulsory purchase order.

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

- (3) In section 3 (preliminary notices) for subsection (1) there is substituted—

(20) 1981 c. 66.

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

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.”.

(4) In that section, in subsection (2), for “(1)(b)” there is substituted “(1)” and after “given” there is inserted “and published”.

(5) In that section, for subsections (5) and (6) there is substituted—

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

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

(6) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after “publication” there is inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) is omitted.

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

(8) References to the 1965 Act are construed as references to that Act as applied to the acquisition of land under article 21 (power to acquire land).

#### **Commencement Information**

**I23** Art. 23 in force at 22.8.2013, see [art. 1](#)

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

**24.—**(1) The promoter may acquire compulsorily—

- (a) such easements or other rights over any land referred to in paragraph (1)(a) or (b) of article 21 (power to acquire land), or
- (b) impose restrictive covenants affecting any such land referred to in paragraph (1)(a) of article 21,

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) Schedule 8 (modification of compensation and compulsory purchase enactments for creation of new rights or imposition of restrictive covenants) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

(3) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 8), where the promoter acquires a right or the benefit of a restrictive covenant over land under paragraph (1) the promoter is not required to acquire a greater interest in that land.

#### Commencement Information

**I24** Art. 24 in force at 22.8.2013, see [art. 1](#)

#### New rights only to be acquired in certain lands

**25.**—(1) In the case of the land specified in Schedule 9 (acquisition of new rights only) the promoter’s powers of compulsory acquisition under article 21 (power to acquire land) are limited to the acquisition of such easements or other new rights in the land as it may require for the purposes of—

- (a) the acquisition of rights over land to provide station access; and
- (b) the creation and acquisition of easements or other rights over land for the purpose of or in connection with the construction or maintenance of the authorised works including the passage of persons or vehicles (with or without materials, plant and machinery) over that land for the purposes of the authorised works or for purposes ancillary to the authorised works.

(2) Where the promoter acquires easements or other new rights in the land specified in Schedule 9, article 24 (power to acquire new rights) applies as it applies to the acquisition of a new right under that article.

(3) In this article “station access” means the provision of pedestrian access for train passengers and visitors to Leeds Railway Station to and from the scheduled works from Wharf Approach in the City of Leeds.

#### Commencement Information

**I25** Art. 25 in force at 22.8.2013, see [art. 1](#)

#### Rights under or over streets

**26.**—(1) The promoter may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised works and may use the subsoil or air-space for those purposes or any other purpose ancillary to its railway undertaking.

(2) Subject to paragraph (4), the power under paragraph (1) may be exercised in relation to a street without the promoter being required to acquire any part of the street or any easement or right in the street.

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

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

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

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

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### Commencement Information

**I26** Art. 26 in force at 22.8.2013, see [art. 1](#)

### *Temporary possession of land*

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

**27.**—(1) The promoter 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 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the authorised works specified in column (4) of that Schedule; and
  - (ii) any other land within the Order limits in respect of which no notice of entry has been served under section 11 of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981;
- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land;
- (d) construct any permanent works on that land: and
- (e) construct the permanent mitigation works specified in relation to land in column (3) of Schedule 10.

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

(3) Without limitation on the scope of paragraph (1)(a)(i) the power exercisable under paragraph (1)(a)(i) in respect of the lands shown within the limits of land to be temporarily used for the oversailing of equipment is to be limited to the temporary occupation and use of the designated air-space for the purposes of the operation of a crane through the designated air-space in connection with the construction of the authorised works.

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

- (a) in the case of land specified in columns (1) and (2) of Schedule 10, after the end of the period of one year beginning with the date of completion of the work specified in relation to that land in column (4) of Schedule 10; or
- (b) in the case of land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the promoter has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 in relation to that land.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the promoter must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the promoter is not to be required to replace a building removed under this article.

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

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

(8) Without affecting article 50 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

(9) The powers of compulsory acquisition of land conferred by this Order do not apply in relation to the land referred to in paragraph (1)(a)(i).

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

(11) Section 13 of the 1965 Act applies 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 22(1) (application of Part 1 of the 1965 Act).

(12) In this article "designated air-space" means so much of the air-space as is comprised in the air-space directly above the highest point of the building currently located on the land specified in paragraph (3) but, subject to paragraph (13), must not be below a level 54 metres above the level of the highway of Little Neville Street at the date of the coming into effect of this Order.

(13) In the assembly and disassembly by the promoter of a crane within the air-space above the lands numbered 158 on the deposited plans, the designated air-space must not be below a level 15 metres above the level of the highway of Little Neville Street.

(14) Paragraph (13) only applies to the assembly and disassembly of the crane and once operational it may only operate within the designated air-space as provided for in paragraph (12).

#### **Commencement Information**

**I27** Art. 27 in force at 22.8.2013, see [art. 1](#)

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

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

- (a) enter upon and take temporary possession of any land within the limits of deviation if such possession is reasonably required for the purpose of 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 buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the promoter 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 the promoter must serve notice of the intended entry on the owners and occupiers of the land.

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

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

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

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

(8) Without affecting article 50 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

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

(10) Section 13 of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 22(1) (application of Part 1 of the 1965 Act).

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

#### Commencement Information

**I28** Art. 28 in force at 22.8.2013, see [art. 1](#)

### *Compensation*

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

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

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

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

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

#### Commencement Information

**I29** Art. 29 in force at 22.8.2013, see [art. 1](#)

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

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

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 24 (power to acquire new rights) and article 25 (new rights only to be acquired in certain lands), the tribunal must set off against the value of the rights so acquired—

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

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

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

#### Commencement Information

**I30** Art. 30 in force at 22.8.2013, see [art. 1](#)

### Supplementary

#### Acquisition of part of certain properties

**31.**—(1) This article applies instead of section 8(1) of the 1965 Act (as applied by article 22 (application of Part 1 of the 1965 Act)) in any case where—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **Commencement Information**

**I31** Art. 31 in force at 22.8.2013, see [art. 1](#)

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

**32.—**(1) Subject to article 17 (extinguishment of navigation rights etc. in the Aire and Calder Navigation) and paragraph (6), all private rights of way over land subject to compulsory acquisition under this Order are extinguished—

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



(b) on the date of entry on the land by the promoter under section 11(1) of the 1965 Act, whichever is the sooner.

(2) Subject to paragraph (6), in respect of land owned by the promoter and required for the purposes of this Order, all private rights of way are extinguished on the appropriation of the land for any of those purposes by the promoter.

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

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

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

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

(a) any notice given by the promoter before the completion of the acquisition of the land, the promoter's appropriation of it, the promoter's entry onto it or the promoter's taking temporary possession of it that any or all of those paragraphs do not apply to any right of way specified in the notice; and

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

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

#### Commencement Information

I32 Art. 32 in force at 22.8.2013, see [art. 1](#)

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

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

(a) no notice to treat is to be served under Part 1 of the 1965 Act as applied to the acquisition of land by article 22 (application of Part 1 of the 1965 Act); and

(b) no declaration is to be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981(21), as applied by article 23 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The powers conferred by article 27 (temporary use of land for construction of works) cease at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the promoter remaining in possession of land after the end of that period, if the land was entered and possession of it was taken before the end of that period.

(21) 1981 c. 66.

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**Commencement Information**

**I33** Art. 33 in force at 22.8.2013, see [art. 1](#)

## PART 4

### MISCELLANEOUS AND GENERAL

#### Planning permission

**34.** Planning permission which is deemed by a direction under section 90(2A) of the 1990 Act to be granted in relation to the authorised works (or any of them) is to be treated as specific planning permission for the purposes of section 264(3)(a) of that Act (cases in which land is to be treated as operational land for the purposes of that Act).

**Commencement Information**

**I34** Art. 34 in force at 22.8.2013, see [art. 1](#)

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

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

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

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

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

**Commencement Information**

**I35** Art. 35 in force at 22.8.2013, see [art. 1](#)

#### Application of landlord and tenant law

**36.—**(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised works or the right to operate the same; and
- (b) any agreement entered into by the promoter 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 prejudices the operation of any agreement to which this article applies.

(3) No such enactment or rule of law applies 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.

**Commencement Information**

**I36** Art. 36 in force at 22.8.2013, see [art. 1](#)

**Obstruction of construction of authorised works**

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

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

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

**Commencement Information**

**I37** Art. 37 in force at 22.8.2013, see [art. 1](#)

**Traffic signs**

**38.—**(1) The promoter may, for the purposes of, or in connection with the construction or operation of, the authorised works, place or maintain traffic signs of a type prescribed by regulations made under section 64(1)(a) (general provisions as to traffic signs) of the 1984 Act or of a character authorised by the Secretary of State on any street specified in column (1) of Schedule 4 (streets subject to alteration of layout) or which gives access to such a street, or on any street in connection with any instrument made under article 39 (traffic regulation) or any other street as reasonably required for conveying information to traffic.

(2) The promoter—

- (a) must consult with the traffic authority as to the placing of signs; and
- (b) unless the traffic authority is unwilling to do so and subject to any directions given under section 65 (powers and duties of highway authorities as to placing of traffic signs) of the 1984 Act, must enter into arrangements with the traffic authority for the signs to be placed and maintained by the traffic authority.

(3) Any power conferred by section 65 of the 1984 Act to give directions to a traffic authority or local traffic authority as to traffic signs includes a power to give directions to the promoter as to

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traffic signs under this article; and the powers conferred by paragraph (1) are exercisable subject to and in conformity with any directions given under that section.

(4) A traffic authority or other authority having power under or by virtue of the 1984 Act to place and maintain, or cause to be placed and maintained, traffic signs on any street referred to in paragraph (1) must consult with the promoter as to the placing of any traffic signs which may affect the authorised works.

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

#### Commencement Information

**I38** Art. 38 in force at 22.8.2013, see [art. 1](#)

### Traffic regulation

**39.**—(1) Subject to the provisions of this article, and the consent of the traffic authority in whose area the street concerned is situated, which consent must not be unreasonably withheld, the promoter may, for the purposes of the authorised works—

- (a) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles in the manner specified in Parts 1 and 2 of Schedule 11 (traffic regulation) on those streets specified in column (2) and along the lengths and between the points specified in column (3) of that Part of that Schedule;
- (b) make provision as to the movement of vehicular traffic in the manner specified in Part 3 of Schedule 11 on the street specified in column (2) as respects direction to the extent specified in column (3) of that Part of that Schedule; and
- (c) permit or prohibit driving in the manner specified in Part 4 of Schedule 11 to that street specified in column (2) and along the lengths, between the points to the extent specified in column (3) of that Part of that Schedule.

(2) Without limitation on the scope of the specific powers conferred by paragraph (1) but subject to the provisions of this article and the consent of the traffic authority in whose area the street concerned is situated, which consent must not be unreasonably withheld, the promoter may, in so far as may be necessary or expedient for the purposes of, in connection with, or in consequence of the construction, maintenance or operation of the authorised works—

- (a) revoke, amend or suspend the whole or in part any Order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any street;
- (c) authorise the use as a parking place of any street;
- (d) restrict the speed of vehicles along a street;
- (e) make provision as to the direction or priority of vehicular traffic on any street; and
- (f) permit or prohibit vehicular access to any street,

either at all times or at times, on days or during such periods as may be specified by the promoter.

(3) The powers conferred by paragraphs (1) and (2) may be exercised at any time prior to the expiry of 12 months from the opening of the authorised works for public use but subject to paragraph (7) any prohibition, restriction or other provision made under paragraph (1) or (2) may have effect both before and after the expiry of that period.

(4) The promoter must consult the chief officer of police and the traffic authority in whose area the street is situated before complying with the provisions of paragraph (5).

(5) The promoter must not exercise the powers conferred by paragraph (1) or (2) unless it has—

(a) given not less than—

(i) 12 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or

(ii) 4 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily,

to the chief officer of police and to the traffic authority in whose area the street is situated; and

(b) advertised its intention in such manner as the traffic authority may specify in writing within 28 days of its receipt of notice of the promoter's intention in the case of sub-paragraph (a)

(i), or within 7 days of its receipt of notice of the promoter's intention in the case of sub-paragraph (a)(ii).

(6) Any prohibition, restriction or other provision made by the promoter under paragraph (1) or (2)—

(a) has effect as if duly made by, as the case may be—

the traffic authority in whose area the street is situated, as a traffic regulation order under the 1984 Act; or

the local authority in whose area the street is situated, as an order under section 32 of the 1984 Act,

and the instrument by which it is effected may specify savings and exemptions (in addition to those mentioned in Schedule 11) to which the prohibition, restriction or other provision is subject; and

(b) be deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004<sup>(22)</sup> (road traffic contraventions subject to civil enforcement).

(7) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the promoter from time to time by subsequent exercise of the powers conferred by paragraph (2) within a period of 24 months from the opening of the authorised works for public use.

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

#### Commencement Information

**I39** Art. 39 in force at 22.8.2013, see [art. 1](#)

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

**40.**—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990<sup>(23)</sup> (summary proceedings by person aggrieved by statutory nuisances) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order is to be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows—

<sup>(22)</sup> 2004 c. 18.

<sup>(23)</sup> 1990 c. 43.

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- (a) that the nuisance relates to premises used by the promoter for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to authorised works; and
  - (b) that the nuisance is attributable to the carrying out of authorised works which are being carried out in accordance with a notice served under section 60, or a consent given under section 61 or 65, of the Control of Pollution Act 1974 (24); or
  - (c) that the nuisance is a consequence of the operation of the authorised works and that it cannot reasonably be avoided.
- (2) The following provisions of the Control of Pollution Act 1974, 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),

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

(3) The provisions of this article do not affect the application to the authorised works of section 122 of the 1993 Act(25) (statutory authority as a defence to actions in nuisance, etc.) or any rule of common law having similar effect.

#### Commencement Information

**I40** Art. 40 in force at 22.8.2013, see [art. 1](#)

### Trespass

**41.—**(1) Any person who trespasses on any part of the land occupied by the promoter for the purposes of constructing the scheduled works is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) No person is to be convicted of an offence under this article unless it is shown that a notice warning the public not to trespass on such land was clearly exhibited and maintained in close proximity to all such land occupied by the promoter.

#### Commencement Information

**I41** Art. 41 in force at 22.8.2013, see [art. 1](#)

### Disclosure of confidential information

**42.** A person who—

- (a) enters a factory, workshop or workplace in pursuance of the provisions of article 14 (protective works to buildings, roads or apparatus of a statutory undertaker) or article 15 (power to survey and investigate land); and
- (b) discloses to any person any information obtained pursuant to sub-paragraph (a) and relating to any manufacturing process or trade secret,

(24) 1974 c. 40.

(25) 1993 c. 43 as amended by the Transport Act 2000 (c. 38) and the Railways Act 2005 (c. 14).

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

**Commencement Information**

**I42** Art. 42 in force at 22.8.2013, see [art. 1](#)

**Statutory undertakers etc.**

**43.** The provisions of Schedule 12 (provisions relating to statutory undertaker etc.) have effect.

**Commencement Information**

**I43** Art. 43 in force at 22.8.2013, see [art. 1](#)

**For the protection of specified undertakers**

**44.** The provisions of Schedule 13 (for the protection of specified undertakers) have effect.

**Commencement Information**

**I44** Art. 44 in force at 22.8.2013, see [art. 1](#)

**For the protection of operators of electronic communications code networks**

**45.** The provisions of Schedule 14 (for the protection of operators of electronic communications code networks) have effect.

**Commencement Information**

**I45** Art. 45 in force at 22.8.2013, see [art. 1](#)

**For the protection of the Trust**

**46.** The provisions of Schedule 15 (for the protection of the Trust) have effect.

**Commencement Information**

**I46** Art. 46 in force at 22.8.2013, see [art. 1](#)

**For the protection of the Environment Agency**

**47.** The provisions of Schedule 16 (for the protection of the Environment Agency) have effect.

**Commencement Information**

**I47** Art. 47 in force at 22.8.2013, see [art. 1](#)

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## Certification of plans etc.

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

### Commencement Information

**I48** Art. 48 in force at 22.8.2013, see [art. 1](#)

## Service of notices

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

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

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

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

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

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

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

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

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

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

(26) 1978 c. 30.



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

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

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

**Commencement Information**

**I49** Art. 49 in force at 22.8.2013, see [art. 1](#)

**No double recovery**

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

**Commencement Information**

**I50** Art. 50 in force at 22.8.2013, see [art. 1](#)

**Arbitration**

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

**Commencement Information**

**I51** Art. 51 in force at 22.8.2013, see [art. 1](#)

Signed by authority of the Secretary of State

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

1st August 2013

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