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STATUTORY INSTRUMENTS

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**1998 No. 3269**

**The Tyne and Wear Passenger  
Transport (Sunderland) Order 1998**

**PART I  
PRELIMINARY**

**Citation and commencement**

**1.**—(1) This Order may be cited as the Tyne and Wear Passenger Transport (Sunderland) Order 1998 and shall come into force on 13th January 1999.

(2) The Tyne and Wear Passenger Transport Acts 1973 to 1989<sup>(1)</sup> and this Order may be cited together as the Tyne and Wear Passenger Transport Acts and Order 1973 to 1998.

**Interpretation**

**2.**—(1) In this Order, unless the context otherwise requires—

“the 1965 Act” means the Compulsory Purchase Act 1965<sup>(2)</sup>;

“the 1990 Act” means the Town and Country Planning Act 1990<sup>(3)</sup>;

“the 1991 Act” means the New Roads and Street Works Act 1991<sup>(4)</sup>;

“the 1993 Act” means the Railways Act 1993<sup>(5)</sup>;

“the Applications Rules” means the Transport and Works (Applications and Objections Procedure) Rules 1992;

“authorised works” means the scheduled works and any other works authorised by this Order;

“the book of reference” means the book of reference described in rule 7(5) of the Applications Rules and 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<sup>(6)</sup>;

“the deposited plans” means the plans described in rule 7(1)(a) and (3) of the Applications Rules and 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 the said rule 7(3);

“the deposited sections” means the sections described in rule 7(2) of the Applications Rules and certified by the Secretary of State as the deposited sections for the purposes of this Order;

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(1) 1973 c.xxxii. 1979 c.i. 1989 c.xiv.

(2) 1965 c. 56.

(3) 1990 c. 8.

(4) 1991 c. 22.

(5) 1993 c. 43.

(6) 1980 c. 66.

“existing” means existing at the date of the making of this Order;

“the further limits” means the limits delineated by the lines shown on the deposited plans and thereon marked “limit of land to be acquired or used”;

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

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

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

“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;

“Railtrack” means Railtrack PLC and includes any associated company (as defined in section 416 of the Income and Corporation Taxes Act 1988(7)) of Railtrack which holds any property for railway purposes;

“the scheduled works” means the works specified in Schedule 1 to this Order;

“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;

“the Sunderland extension” means—

- (a) the authorised works; and
- (b) either such rights as are granted, pursuant to this Order or any other enactment, to the undertaker over the existing railway from Newcastle to Hartlepool or any lands or works relating to that railway or, where the context so requires, any part of the said existing railway, lands or works over which such rights are granted;

“the tribunal” means the Lands Tribunal; and

“the undertaker” means the Tyne and Wear Passenger Transport Executive.

(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, and references to the subsoil of any land include references to any cellar, basement, vault, arch or other construction forming part of any such land.

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

(4) Unless the context otherwise requires, any reference in this Order to a work identified by the number of such work shall be construed as a reference to the work of that number authorised by this Order.

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

(6) References in this Order to access to any place include egress from that place.

### **Incorporation of Railways Clauses Consolidation Act 1845**

3.—(1) The following provisions of the Railways Clauses Consolidation Act 1845<sup>(8)</sup> shall be incorporated in this Order—

- section 24 (obstructing construction of railway);
- section 58 (company to repair roads used by them), except for the words from “and if any question” to the end;
- section 68 (accommodation works by company);
- section 71 (additional accommodation works by owners), except for the words “or directed by such justices to be made by the company” and “or, in case of difference, as shall be authorised by two justices”;
- sections 72 and 73 (supplementary provisions relating to accommodation works);
- section 77 (presumption that minerals excepted from acquisition of land);
- sections 78 to 85E and Schedules 1 to 3 (minerals under railways), as respectively substituted and inserted by section 15 of the Mines (Working Facilities and Support) Act 1923<sup>(9)</sup>;
- sections 103 and 104 (refusal to quit carriage at destination);
- section 105 (carriage of dangerous goods on railway);
- section 145 (recovery of penalties); and
- section 154 (transient offenders).

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

- “the company” means the undertaker;
- “goods” includes any thing conveyed on the railways authorised to be constructed by this Order;
- “lease” includes an agreement for a lease;
- “prescribed”, in relation to any such provision, means prescribed by this Order for the purposes of that provision;
- “the railway” means any railway authorised to be constructed by this Order and, except where the context otherwise requires, any other authorised works;
- “the special Act” means this Order; and
- “toll” includes any rate or charge or other payment payable under this Order or any other enactment for any passenger or goods conveyed on any railway authorised to be constructed by this Order.

### **Application of New Roads and Street Works Act 1991**

4.—(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—

- (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 Highways Act 1980 (dual carriageways and roundabouts).

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<sup>(8)</sup> 1845 c. 20.

<sup>(9)</sup> 1923 c. 20.

(2) The provisions of the 1991 Act mentioned in paragraph (3) below 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 the undertaker under the powers conferred by this Order where no street works are executed in that street as they would apply if the stopping up, alteration or diversion were occasioned by street works executed in that street by the undertaker.

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

- section 54 (advance notice of certain works);
- section 55 (notice of starting date of works);
- section 59 (general duty of street authority to co-ordinate works);
- section 60 (general duty of undertakers to co-operate);
- section 69 (works likely to affect other apparatus in the street);
- section 76 (liability for cost of temporary traffic regulations);
- 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.

(4) Sections 54 and 55 of the 1991 Act as applied by paragraph (2) above shall 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.

## PART II WORKS PROVISIONS

### *Principal powers*

#### **Power to construct works**

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

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

(3) The undertaker may, within the limits of deviation, or within the further limits, 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 to alter the position of apparatus, including mains, sewers, drains and cables;
- (b) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
- (c) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised works;
- (d) works for the benefit or protection of premises affected by the authorised works;
- (e) works for the alteration or demolition of any building or structure; and
- (f) works to alter the position of any street furniture.

(4) The undertaker may, within the limits of deviation or within the further limits, carry out such other works (of whatever nature) as may be necessary or expedient for the purposes of, or in connection with or in consequence of, the construction of the scheduled works.

### **Power to deviate**

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

### **Stations**

7. If the undertaker proceeds with the construction of the scheduled works it may—
- (a) alter the existing stations specified in Part I of Schedule 2 to this Order on the lands therein specified; and
  - (b) construct the stations specified in Part II of Schedule 2 to this Order on the lands therein specified;

and may maintain and operate the stations so altered or constructed, and may construct, maintain and operate all necessary works and conveniences connected with those stations.

### **Access to works**

8. The undertaker may, for the purposes of the scheduled works, form and lay out means of access or improve existing means of access in such locations within the limits of deviation or the further limits as may be approved by the highway authority, but such approval shall not be unreasonably withheld.

### **Stopping up of streets and extinguishment of rights**

9.—(1) Subject to the provisions of this article, the undertaker may, in connection with the construction of the authorised works, stop up each of the streets mentioned in columns (1) and (2) of Parts I and II of Schedule 3 to this Order and extinguish all rights to use vehicles (other than unpowered cycles) in the street mentioned in columns (1) and (2) of Part III of that Schedule to the extent specified, by reference to the letters and numbers shown on the deposited plans, in column (3) of Parts I, II and III of that Schedule.

(2) No street specified in columns (1) and (2) of Part I of Schedule 3 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 until the new street to be substituted for it, and which is specified in relation to it either by reference to the letters and numbers shown on the deposited plans, or by reference to one of the scheduled works, 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.

(3) No street specified in columns (1) and (2) of Part II of Schedule 3 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 all the land which abuts on it falls within one or more of the following categories, namely—

- (a) land to which there is no right of access directly from the street or part to be stopped up,
- (b) land to which there is reasonably convenient access otherwise than directly from the street or part to be stopped up,
- (c) land the owners and occupiers of which have agreed to the stopping up of the street or part, and

(d) land which is in the possession of the undertaker.

(4) Where a street has been stopped up under this article the undertaker may, without making any payment, appropriate and use for the purposes of the Sunderland extension so much of the site of the street as is bounded on both sides by land owned by the undertaker.

(5) 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 Land Compensation Act 1961(10).

(6) This article is subject to paragraph 2 of Schedule 10 to this Order.

### **New streets to be provided**

**10.** The undertaker may, in connection with the construction of the authorised works, provide each of the streets mentioned in Schedule 4 to this Order.

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

**11.—**(1) The undertaker 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 (2) below, prevent all persons from passing along the street.

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

(3) Without prejudice to the generality of paragraph (1) above, the undertaker may exercise the powers of this article in relation to so much of the streets specified in Schedule 5 to this Order as lie within the limits of deviation or within the further limits.

(4) The undertaker shall not exercise the powers of this article in relation to any street without the consent of the street authority, but such consent shall not be unreasonably withheld.

### **Construction and maintenance of streets**

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

(2) 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 the undertaker 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) above do not apply in relation to the structure of any bridge or tunnel carrying a street over or under any part of the authorised works.

(4) Nothing in this article shall prejudice the operation of section 87 of the 1991 Act (prospectively maintainable highways); and the undertaker shall not by reason of any duty under this 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.

(5) Nothing in this article shall have effect in relation to street works as respects which the provisions of Part III of the 1991 Act apply.

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(10) 1961 c. 33.

### **Agreements with street authorities**

- 13.**—(1) A street authority and the undertaker 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 of any works to be carried out in any street.
- (2) Such an agreement may, without prejudice to the generality of paragraph (1) above—
- (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.

### **Construction of bridges and tunnels**

**14.** Any bridge or tunnel to be constructed under this Order for carrying a highway over or under a railway shall be constructed in accordance with plans and specifications approved by the highway authority, but such approval shall not be unreasonably withheld.

#### *Supplemental powers*

### **Discharge of water**

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

(2) The undertaker 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) The undertaker 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) The undertaker shall not, in the exercise of the powers conferred by this article, damage or interfere with the beds or banks of any watercourse forming part of a main river.

(5) The undertaker 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<sup>(11)</sup>.

(7) In this article—

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(11) 1991 c. 57.

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, a local authority or a harbour authority within the meaning of the Harbours Act 1964<sup>(12)</sup>;
- (b) “watercourse” includes 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.

### Level crossings at East Boldon

16.—(1) In this article—

“barrier” includes gate;

“the existing level crossing” means the existing level crossing of Station Road/Station Approach, East Boldon, in the metropolitan borough of South Tyneside;

“the highway authority” means South Tyneside Metropolitan Borough Council;

“the level crossing enactments” means the following Acts, that is—

- (a) an Act (1835) intituled “An Act for enabling John Brandling and Robert William Brandling, Esquires, to purchase and take leases of lands and hereditaments for the formation of a railway from Gateshead to South Shields and Monkwearmouth, all in the County Palatine of Durham, with branches therefrom”<sup>(13)</sup>;
- (b) an Act (1836) intituled “An Act for incorporating certain persons for carrying into effect the purposes of an Act passed in the Fifth and Sixth year of the reign of his present Majesty, intituled “An Act for enabling John Brandling and Robert William Brandling, Esquires, to purchase and take leases of lands and hereditaments for the formation of a railway from Gateshead to South Shields and Monkwearmouth, all in the County Palatine of Durham, with branches therefrom”, and for other purposes”<sup>(14)</sup>; and
- (c) an Act (1845) intituled “An Act for enabling the Newcastle and Darlington Junction Railway Company to purchase the Brandling Junction Railway; and to enable the said Company to make certain branch railways, stations and works, and for other purposes”<sup>(15)</sup>;

“the new level crossing” means a new level crossing where Work No. 4A will cross the railway;

“protective equipment” includes lights, traffic signs (within the meaning of section 64(1) of the Road Traffic Regulation Act 1984<sup>(16)</sup>), manual, mechanical, automatic, electronic or telephonic equipment or other devices; and

“the railway” means the existing Newcastle to Hartlepool railway of Railtrack.

(2) The undertaker may construct Work No. 4A so as to carry it on the level across the railway.

(3) The highway authority and the undertaker may enter into agreements with respect to the construction and maintenance of the new level crossing; and such an agreement may contain such terms as to payment or otherwise as the parties consider appropriate.

(4) The undertaker may provide, maintain and operate at or near the new level crossing such barriers or other protective equipment as the Secretary of State may in writing approve.

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<sup>(12)</sup> 1964 c. 40.

<sup>(13)</sup> 5 & 6 Wm. 4 c.lxxxiii.

<sup>(14)</sup> 6 Wm. 4 c.lvii.

<sup>(15)</sup> 8 & 9 Vict. c.xcii.

<sup>(16)</sup> 1984 c. 27.



(5) Any traffic sign placed pursuant to this article on or near a highway or other road to which the public has access shall be treated for the purposes of section 64(4) of the Road Traffic Regulation Act 1984 as having been placed as provided by that Act.

(6) As from the completion and opening for public use of the new level crossing all rights of way over the existing level crossing shall be extinguished (subject to paragraph 2 of Schedule 10 to this Order) and the provisions of the level crossing enactments shall cease to apply to it.

(7) Any person who suffers loss by the extinguishment 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 Land Compensation Act 1961.

### **Safeguarding works to buildings**

17.—(1) Subject to the following provisions of this article, the undertaker may at its own expense and from time to time carry out such safeguarding works to any building situated on the relevant lands as the undertaker 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 the undertaker may enter and survey any building falling within paragraph (1) above and any land belonging to it which forms part of the relevant lands.

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

- (a) enter the building and any land belonging to it, being land forming part of the relevant lands; and
- (b) where the works cannot be carried out reasonably conveniently without entering land adjacent to the building, enter the adjacent land (but not any building erected on it), being lands forming part of the relevant lands.

(5) Before exercising—

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

the undertaker shall, except in 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) above, specifying the safeguarding works proposed to be carried out.

(6) Where notice is served under paragraph (5)(a), (c) or (d) above, 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 49 below.

(7) The undertaker 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,

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

(9) Without prejudice to article 47 below, nothing in this article shall relieve the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act.

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

(11) In this article—

- (a) “building” includes any structure or erection or any part of a building, structure or erection;
- (b) “the relevant lands” means the following lands in the city of Sunderland:—
  - (i) the lands numbered 61, 68, 71, 86 and 93 to 96 in the book of reference and on the deposited plans;
  - (ii) so much of the lands numbered 68 in the book of reference and on the deposited plans as comprises a house and outbuildings;
  - (iii) so much of the lands numbered 77 in the book of reference and on the deposited plans as comprises outbuildings; and
  - (iv) so much of the lands numbered 90 in the book of reference and on the deposited plans as comprises a public house, premises and yard.
- (c) “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; and
  - (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.

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

**18.—**(1) The undertaker may for the purposes of this Order—

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

(2) No land may be entered, or equipment placed or left on or removed from the land under paragraph (1) above, 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 undertaker—

(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) The undertaker 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 Land Compensation Act 1961.

### **Attachment of equipment to listed buildings**

**19.**—(1) In this article, “the structures” means so much of the Monkwearmouth Station Museum (the Monkwearmouth Museum of Land Transport) and the Monkwearmouth railway bridge and viaduct (both of which are listed buildings within the meaning of section 1(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990<sup>(17)</sup>) as is situated within the limits of deviation, the further limits or the limits shown on the deposited plans marked “Limit of listed buildings”.

(2) Subject to paragraph (3) below and to the consent of the owner of the structures, the undertaker may affix to any part of the structures any brackets, cables, wires, insulation and other apparatus required in connection with the electrification of the existing railway from Pelaw to Sunderland for the purposes of the Sunderland extension.

(3) Nothing in this article shall avoid the need to obtain listed building consent under section 8 of the said Act of 1990 to the exercise of the powers of paragraph (2) above.

### **Agreements with Railtrack**

**20.**—(1) The undertaker and Railtrack may enter into and carry into effect agreements with respect to the construction, maintenance, use and operation of—

(a) any of the authorised works, or any part of any of those works; and

(b) any works required for the purposes thereof or in connection therewith;

by Railtrack or by the undertaker, or by the undertaker and Railtrack jointly.

(2) Any agreement made under paragraph (1) above may make provision with respect to any other matters incidental or subsidiary thereto or consequential thereon, including the defraying of, or the making of contributions towards, costs incurred by either party to the agreement.

(3) Without prejudice to the generality of paragraph (1) above, any such agreement may provide for the exercise by Railtrack or by the undertaker, or by the undertaker and Railtrack jointly, of all or any of the powers of the undertaker or Railtrack (as the case may be) with respect to any of the authorised works and any works required for the purposes thereof or in connection therewith.

(4) The exercise by Railtrack or the undertaker or by the undertaker and Railtrack jointly, under this article of any powers of the other of them with respect to the works, or any part of any of those works, or any works required for the purposes thereof or in connection therewith, shall be subject to the same provisions in relation to those powers as would apply if those powers were exercised by the undertaker or Railtrack (as the case may be) alone, and accordingly those provisions, with any necessary modifications, shall apply to the exercise of such powers by Railtrack or the undertaker, or by the undertaker and Railtrack jointly.

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(17) 1990 c. 9.

(5) The undertaker and Railtrack may enter into, and carry into effect, agreements for the transfer to, and vesting in Railtrack or the undertaker, or the undertaker and Railtrack jointly, of—

- (a) any of the authorised works or any part of any of those works; or
- (b) any works lands or other property required for the purposes thereof or in connection therewith;

together with the rights and obligations of the undertaker or Railtrack (as the case may be) in relation thereto.

## PART III

### ACQUISITION AND POSSESSION OF LAND

#### *Powers of acquisition*

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

**21.**—(1) The undertaker may acquire compulsorily so much of the land shown on the deposited plans within the limits of deviation or the further limits and described in the book of reference as may be required for the purposes of or in connection with the authorised works and may use any land so acquired for those purposes or for any other purposes connected with or ancillary to its railway undertaking.

(2) Without prejudice to the generality of paragraph (1) above, the undertaker may acquire compulsorily for the purposes specified in column (1) of Schedule 6 to this Order all or any of the land shown on the deposited plans within the further limits and so described in the book of reference as is referred to in columns (2) and (3) of that Schedule.

(3) This article is subject to articles 26(2), 28 and 29(8) below.

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

**22.**—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(**18**) shall apply as if this Order were a compulsory purchase order.

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

(b) 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

(b) published in the London Gazette and in one or more local newspapers circulating in the locality of the authorised works.”.

(c) In that section, in subsection (2), for “(1)(b)” there shall be substituted “(1)”.

(d) 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.”.
- (e) In section 5 (earliest date for execution of declaration)—
- (i) in subsection (1), after “publication” there shall be inserted “in the London Gazette or in one or more local newspapers circulating in the area in which the land is situated”, and
  - (ii) subsection (2) shall be omitted.
- (f) 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.
- (g) References to the 1965 Act shall be construed as references to that Act as applied to the acquisition of land under article 21 above.

### **Application of Part I of Compulsory Purchase Act 1965**

**23.**—(1) Part I of the 1965 Act, insofar 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(19) 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—
- (a) 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; and
  - (b) in section 11(1) (which confers power to enter on and to take possession of land subject to a notice to treat on giving not less than 14 days' notice) for the reference to 14 days' notice there were substituted—
    - (i) in a case where the notice to treat relates only to the acquisition of subsoil or the acquisition of an easement or other right over the land, a reference to notice of one month; or
    - (ii) in any other case, a reference to notice of 3 months.

### **Powers to acquire new rights**

**24.**—(1) The undertaker may compulsorily acquire such easements or other rights over any land referred to in paragraph (1) of article 21 above (subject to paragraph (3) of that article) 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 7 to this Order), where the undertaker acquires a right over land under paragraph (1) above the undertaker shall not be required to acquire a greater interest in it.

(3) Schedule 7 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 of a right over land by the creation of a new right.

### **Powers to acquire subsoil only**

**25.**—(1) The undertaker may compulsorily acquire so much of the subsoil of the land referred to in paragraph (1) of article 21 above (subject to paragraph (3) of that article) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of the subsoil of land under paragraph (1) above it shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) above shall not prevent article 33 below from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or factory.

### **Cases where powers of acquisition limited to subsoil**

**26.**—(1) This article applies to the lands in the city of Sunderland numbered 34 to 40 in the book of reference and on the deposited plans.

(2) In the case of land to which this article applies, the undertaker's powers of compulsory acquisition under article 21 above shall be limited to the acquisition of, or of rights in, so much of the land as is comprised in the existing Sunderland North tunnel (including the subsoil beneath the tunnel) as may be required for the purposes of the authorised works.

(3) Where the undertaker acquires any part of, or rights in, land to which this article applies, it shall not be required to acquire a greater interest in the land or an interest in any other part of it.

(4) This article is without prejudice to sub-paragraph (2) of paragraph 5 of Schedule 10 to this Order.

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

**27.**—(1) The undertaker may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the limits of deviation or the further limits as may be required for the purposes of or in connection with the authorised works and may use the subsoil and air-space for those purposes or any other purpose connected with or ancillary to the Sunderland extension.

(2) The power under paragraph (1) above may be exercised in relation to a street without the undertaker being required to acquire any part of the street or any easement or right in the street.

(3) The undertaker shall not be required to pay any compensation for the exercise of the powers conferred by paragraph (1) above where the street is a highway; but where the street is not a highway any person suffering loss by the exercise of that power shall be entitled to compensation to be determined, in case of dispute, under Part I of the Land Compensation Act 1961.

(4) Paragraphs (2) and (3) above shall not apply in relation to—

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

### **Certain lands etc. not to be acquired compulsorily**

**28.** Nothing in this Order shall authorise the undertaker to acquire compulsorily any of the lands mentioned in Schedule 8 to this Order, or any rights over those lands, but the undertaker may acquire by agreement any part of those lands, or any rights over them, for the purposes of the Sunderland extension.

### *Temporary possession of land*

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

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

- (a) enter upon and take temporary possession of, for the purposes specified in column (1) of Schedule 9 to this Order, the land specified in columns (2) and (3);
- (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) Not less than 28 days before entering upon and taking temporary possession of land under this article the undertaker shall serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the part of the authorised works for the purposes of which possession of the land is taken.

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

(5) The undertaker 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.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5) above, or as to the amount of the compensation, shall be determined under Part I of the Land Compensation Act 1961.

(7) Without prejudice to article 47 below, 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 (5) above.

(8) The powers of compulsory acquisition of land conferred by this Order shall not apply in relation to any land of which temporary possession is taken under paragraph (1) above except that the undertaker shall not be precluded from acquiring new rights over any part of that land under article 24 above.

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

(10) In this article “building” includes any structure or other erection.

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

**30.**—(1) At any time during the maintenance period for the scheduled works, the undertaker may—

- (a) enter upon and take temporary possession of any land within the limits of deviation or the further limits which is within 20 metres from that work if such possession is reasonably required for the purpose of, or in connection with, maintaining the work or any ancillary works connected with it;
- (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) above shall not authorise the undertaker 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 undertaker shall serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker 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, and restore the land to the reasonable satisfaction of the owner of the land.

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

(6) The undertaker 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) above, or as to the amount of the compensation, shall be determined under Part I of the Land Compensation Act 1961.

(8) Without prejudice to article 47 below, 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) above.

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

(10) 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 use;
- (b) “building” includes structure or any other erection; and
- (c) 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.

### *Compensation*

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

**31.—**(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.

(2) In paragraph (1) above “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.



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

**32.**—(1) In assessing the compensation payable to any person in respect of the acquisition from him under this Order of any land, the tribunal shall 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 him by reason of the Sunderland extension.

(2) In assessing the compensation payable to any person in respect of the acquisition from him of any new rights over land under article 24 above, the tribunal shall set-off against the value of the rights so acquired—

- (a) any increase in 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 him by reason of the Sunderland extension.

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

### *Supplemental powers*

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

**33.**—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 23 above) 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 the undertaker 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 the undertaker 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 the undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker 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) that 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 the undertaker 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 undertaker 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 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, the undertaker 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**

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

whichever is sooner.

(2) All private rights of way over land of which the undertaker takes temporary possession under this Order shall be suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(3) 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 Land Compensation Act 1961(20).

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(20) 1961 c. 33.

(4) 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.) applies.

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

**35.**—(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 by article 23 above;
- (b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981, as applied by article 22 above.

(2) The powers conferred by article 29 above shall cease at the end of the period referred to in paragraph (1) above, save that nothing in this paragraph shall prevent the undertaker remaining in possession of land after the end of that period, if the land was entered and possession of it was taken before the end of that period.

## **PART IV**

### **MISCELLANEOUS AND GENERAL**

#### **Power to operate and use railways**

**36.** The undertaker may operate and use the Sunderland extension as a system, or part of a system, of transport for the carriage of passengers and goods.

#### **Provisions as to use of electrical energy**

**37.**—(1) The following provisions of this article shall apply to the use of electrical energy for the purposes of the railways comprised in the authorised works.

(2) The undertaker shall employ either insulated returns or uninsulated metallic returns of low resistance.

(3) The undertaker shall take all reasonable precautions in constructing, placing and maintaining its electric lines and circuits and other works and also in working the railways comprised in the authorised works so as to—

- (a) minimise the discharge of electrical currents into the ground; and
- (b) avoid injuriously affecting by fusion or electrolytic action any electric lines or any gas or water pipes, or other metallic pipes, structures or substances, or injuriously interfering with, or with the working of, any wire, line or apparatus used for the purpose of transmitting electrical energy or of telecommunications, or the currents in any such wire, line or apparatus.

(4) The undertaker shall be deemed to take all reasonable and proper precautions against interference with, or with the working of, any wire, line or apparatus if and so long as it uses—

- (a) at the option of the undertaker, insulated returns or uninsulated metallic returns of low resistance, and
- (b) such other means of preventing injurious interference with, and with the working of, the electric wires, lines and apparatus, as may be specified by the Secretary of State (and in specifying such means the Secretary of State shall have regard to the expense involved in relation to the protection afforded).

(5) The provisions of this article shall not give any right of action in respect of injurious interference with, or with the working of, any electric wire, line or apparatus, or the currents therein, unless, in the construction, erection, maintaining and working of such wire, line and apparatus, all reasonable and proper precautions, including the use of an insulated return, have been taken to minimise injurious interference therewith, and with the currents therein, by or from other electric currents.

(6) In this article, reference to an insulated return includes reference to a return by means of a combined neutral and earth cable which is covered by an insulated sheath suitable for protection against corrosion.

### **Application of existing enactments**

**38.**—(1) Any enactment by which any part of any railway or former railway situated within the limits of deviation or the further limits was authorised shall have effect subject to the provisions of this Order.

(2) The relevant enactments shall apply to the Sunderland extension and to railway premises, including stations, station approaches, escalators and moving pavements, comprised in or provided in connection with the Sunderland extension, and to trains or Metro vehicles of the undertaker on the Sunderland extension, as they apply to the rapid transit railway or Metro authorised by the Tyneside Metropolitan Railway Act 1973(21) and to railway premises, including stations, station approaches, escalators and moving pavements, comprised in or provided in connection with the rapid transit railway, and to trains or Metro vehicles on the rapid transit railway.

(3) In paragraph (2) above and paragraph (6) below “the relevant enactments” are—

Tyneside Metropolitan Railway Act 1973—

section 58 (Byelaws relating to rapid transit railway);

Tyne and Wear Passenger Transport Act 1979(22)—

section 5 (Avoidance of fares);

Byelaws relating to Metro and bus premises made by the Tyne and Wear Passenger Transport Executive on 4th July 1980.

(4) In its application to the Sunderland extension section 5 of the Tyne and Wear Passenger Transport Act 1979 shall have effect as though for the reference in subsection (3) to a fine not exceeding £200 and for the reference in subsection (4) to a fine of £500 there were substituted references to a fine on level 3 of the standard scale.

(5) In the event of conflict, in relation to a station of which the undertaker is not the operator, between—

(a) a byelaw applied, or made under a power applied, by paragraph (2) above; and

(b) any other byelaw made or enforceable by the operator of the station;

that other byelaw shall prevail.

(6) In relation to the existing railway between Newcastle and Hartlepool the relevant enactments shall apply only to trains or Metro vehicles of the undertaker and to stations served by such trains or vehicles.

(7) For the purpose of paragraph (5) above, “operator” has the meaning given by section 6(2) of the 1993 Act.

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(21) 1973 c.i.

(22) 1979 c.xxxii.

### **Consultative committees**

**39.**—(1) In this article “the committees” means the Rail Users' Consultative Committee for the time being established under section 2(2) of the 1993 Act for the area where the Sunderland extension is situated and the Central Rail Users' Consultative Committee established by section 3(2) of that Act.

(2) As from the commencement of the undertaker’s passenger services on the Sunderland extension, the committees shall have the same respective functions in relation to the services and facilities provided by the undertaker on the Sunderland extension as they have under any enactment in relation to the undertaking authorised by the Tyneside Metropolitan Railway Act 1973 and the Tyne and Wear Passenger Transport Act 1989.

### **Power for undertaker to contract for police**

**40.**—(1) The undertaker may from time to time make agreements with the chief officer of police and a police authority for the employment by the undertaker of any members of the police establishment of that police authority for police duty within railway premises or elsewhere upon the Sunderland extension.

(2) Any such agreement may contain such terms and conditions and provide for such payment or consideration as the undertaker shall agree with the police authority.

(3) In this article “police authority” includes—

- (a) a police authority within the meaning of the Police Act 1964(23); and
- (b) the British Railways Board.

### **Power to transfer, lease etc. undertaking**

**41.**—(1) In this article, unless the context otherwise requires—

“functions” includes powers, duties and obligations;

“transferee” means a person to whom all or any of the property or functions of the undertaker have been transferred by virtue of a transfer agreement; and

“transfer agreement” means an agreement entered into under paragraphs (2) or (3) below.

(2) The undertaker may enter into and carry into effect an agreement to sell, lease, charge or otherwise dispose of, on such terms and conditions as it thinks fit, the whole or any part of the undertaking consisting of the Sunderland extension and any land held by the undertaker for the purpose of, or in connection with, the Sunderland extension.

(3) Without prejudice to the generality of paragraph (2) above, the undertaker may enter into and carry into effect an agreement with any other person with respect to the transfer to and vesting in that other person of all or any of its functions under this Order.

(4) A transfer agreement may be entered into so as to transfer and vest such property and functions in any other person for such period as may be specified in that agreement or for so long as the agreement remains in force and where such an agreement is entered into references in this Order to the undertaker shall, to the extent that the agreement so provides, have effect as references to the transferee.

(5) Without prejudice to the powers of the undertaker to terminate or vary a transfer agreement, a transfer agreement may specify circumstances in which that agreement shall cease to have effect before the expiry of any period specified in any such agreement.

(6) A transfer agreement may include such supplementary, incidental, transitional and consequential provisions as the undertaker may consider to be necessary or expedient.

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(23) 1964 c. 68.

(7) Upon expiry of any period specified in a transfer agreement in accordance with paragraph (4) above, or upon a transfer agreement being terminated or otherwise ceasing to have effect, the functions and property of the undertaker which were transferred by that agreement shall, by virtue of this paragraph but subject to the effect of any further transfer agreement entered into by the undertaker, be revested in the undertaker, but such reversion shall not make the undertaker subject to any of the liabilities of the transferee other than any continuing duties imposed by this Order.

(8) Notwithstanding anything in any transfer agreement, any duty arising under this Order to complete the construction of, or to maintain or operate any works in respect of which the undertaker's functions are transferred by a transfer agreement, together with such rights and property as are required for the discharge of that duty, shall revert to the undertaker in the event of the abandonment of those works or in the event that the works are not completed within 10 years of the commencement of construction of those works.

(9) Unless the transfer agreement otherwise provides, if a duty to complete the construction of, to maintain or to operate any works reverts to the undertaker under paragraph (8) above, the transfer agreement shall terminate and all the functions and property of the undertaker which were transferred by that agreement shall be revested in the undertaker in accordance with paragraph (7) above.

(10) Within 21 days of the completion of any transfer agreement the undertaker shall serve notice on the Secretary of State stating the name and address of the transferee and the date when the transfer is to take effect.

(11) Within 21 days of the reversion in the undertaker of any property or functions pursuant to paragraph (7) or (9) above or the reversion to the undertaker of any duty, rights or property pursuant to paragraph (8) above, the undertaker shall serve notice on the Secretary of State, providing him with particulars of the reversion or reversion concerned.

(12) If the undertaker fails to comply with the obligations imposed by paragraph (10) or (11) above it shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(13) A transfer agreement may confer on the transferee the power of the undertaker to enter into a transfer agreement under this article in respect of any functions or property transferred to the transferee, and the provisions of this article, with the exception of paragraphs (8) and (9) above and paragraph (14) below, shall apply in relation to the exercise of such power by such transferee as if references to the undertaker were references to the transferee.

(14) The inclusion in any transfer agreement of the power to enter into a transfer agreement or anything done in pursuance of such a power shall not affect the reversion to the undertaker in the circumstances referred to in paragraphs (8) and (9) above of any functions or property of the undertaker.

#### **Maintenance of approved works etc.**

**42.—**(1) Where pursuant to the Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994<sup>(24)</sup> approval has been obtained from the Health and Safety Executive with respect to any works, plant or equipment (including vehicles) forming part of the railways authorised by this Order, 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 railways so authorised.

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

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(24) [S.I. 1994/157](#).

(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.

#### **Disclosure of confidential information**

**43.** A person who—

- (a) enters a factory, workshop or workplace in pursuance of the provisions of article 17 or article 18 above; 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.

#### **Statutory undertakers etc.**

**44.** The provisions of Schedule 10 to this Order shall have effect.

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

**45.** The undertaker shall, as soon as practicable after the making of this Order, submit copies of the book of reference, the deposited sections and the deposited plans to the Secretary of State for certification that they are true copies of, respectively, the book of reference, the deposited sections and the deposited plans 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**

**46.—(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<sup>(25)</sup> 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) above 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
- (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.

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(25) 1978 c. 30.

(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**

47. 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.

**Withholding of consent**

48. Where it is provided in this Order that any consent or approval is not to be unreasonably withheld, any dispute as to whether it is so unreasonably withheld or as to any conditions subject to which it is given shall be determined by arbitration.

**Arbitration**

49. 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 for the Environment, Transport and the Regions

*A. S. D. Whybrow*  
Head of Charging and Local Transport Division,  
Department of the Environment, Transport and  
the Regions

23rd December 1998