
STATUTORY INSTRUMENTS

1998 No. 3269

**TRANSPORT AND WORKS
TRANSPORT**

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

Made - - - - 23rd December 1998

Coming into force - - 13th January 1999

Whereas an application has been made to the Secretary of State for Transport in accordance with the Transport and Works (Applications and Objections Procedure) Rules 1992(1) made under sections 6, 7 and 10 of the Transport and Works Act 1992(2) (“the 1992 Act”), for an Order under sections 1 and 5 of the 1992 Act;

And whereas the Secretary of State for Transport caused an inquiry to be held for the purposes of the application pursuant to section 11 of the 1992 Act;

And whereas the Secretary of State for the Environment, Transport and the Regions (“the Secretary of State”), having considered the report of the person who held the inquiry, has determined to make an Order giving effect to the proposals comprised in the application with modifications which in his opinion do not make any substantial change in the proposals;

And whereas notice of the Secretary of State’s determination was published in the London Gazette on 18th December 1998;

And whereas the Secretary of State is satisfied that as respects the stopping up of the streets mentioned in Part I of Schedule 3 to this Order an alternative right of way has been or will be provided and that as respects the streets mentioned in Part II of that Schedule the provision of an alternative right of way is not required;

Now, therefore, the Secretary of State, in exercise of the powers conferred on him by sections 1 and 5 of, and paragraphs 1 to 4, 7 to 13 and 15 to 17 of Schedule 1 to, the 1992 Act and of all other powers enabling him in that behalf, hereby makes the following Order:—

(1) S.I. 1992/2902.
(2) 1992 c. 42.

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⁽³⁾ 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⁽⁴⁾;

“the 1990 Act” means the Town and Country Planning Act 1990⁽⁵⁾;

“the 1991 Act” means the New Roads and Street Works Act 1991⁽⁶⁾;

“the 1993 Act” means the Railways Act 1993⁽⁷⁾;

“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⁽⁸⁾;

“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;

“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

⁽³⁾ 1973 c.xxxii. 1979 c.i. 1989 c.xiv.

⁽⁴⁾ 1965 c. 56.

⁽⁵⁾ 1990 c. 8.

⁽⁶⁾ 1991 c. 22.

⁽⁷⁾ 1993 c. 43.

⁽⁸⁾ 1980 c. 66.

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⁽⁹⁾) 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⁽¹⁰⁾ 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);

⁽⁹⁾ 1988 c. 1.
⁽¹⁰⁾ 1845 c. 20.

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⁽¹¹⁾;
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).

(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);

(11) 1923 c. 20.

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(12).

(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.

(12) 1961 c. 33.

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.

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(13).

(7) In this article—

- (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(14);
- (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;

(13) 1991 c. 57.

(14) 1964 c. 40.

“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”(15);
- (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”(16); 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”(17);

“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(18)), 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.

(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

(15) 5 & 6 Wm. 4 c.lxxxiii.

(16) 6 Wm. 4 c.lvii.

(17) 8 & 9 Vict. c.xcii.

(18) 1984 c. 27.

(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(19)) 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.

(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(20) 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(21) 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.

(21) 1981 c. 67.

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(22).

(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

(22) 1961 c. 33.

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⁽²³⁾ 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⁽²⁴⁾—

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.

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.

⁽²³⁾ 1973 c.i.

⁽²⁴⁾ 1979 c.xxxii.

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(25); 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.

(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 re-vested in the undertaker, but such re-vesting 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 re-vested 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 re-vesting 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 re-vesting 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⁽²⁶⁾ 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.

(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;

(26) S.I. 1994/157.

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⁽²⁷⁾ 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.

(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.

(27) 1978 c. 30.

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

23rd December 1998

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

SCHEDULES

SCHEDULE 1

Article 2(1)

SCHEDULED WORKS

In the metropolitan borough of Gateshead—

Work No. 1—A railway interchange (the Pelaw interchange), including alterations to the existing Pelaw junction, comprising—

Work No. 1A—A railway (755 metres in length) commencing by a junction with the Newcastle-bound track of the Newcastle to South Shields railway of the Metro at a point 60 metres east of the bridge (number 297) carrying the footpath from Shields Road (A 185), Pelaw, to Manor Gardens, Wardley, over that railway, passing eastwards then northwards and terminating by a junction with the Newcastle-bound track of the said Newcastle to South Shields railway at a point 25 metres south of the bridge carrying South Shields Road over that railway, including viaducts over the Leamside branch railway of Railtrack and over the Newcastle to Hartlepool railway of Railtrack and Work No. 1D.

Work No. 1B—A railway (100 metres in length) commencing by a junction with the South Shields-bound track of the Newcastle to South Shields railway at a point 85 metres east of the said bridge number 297, passing eastwards and terminating by a junction with the Newcastle-bound track of the Newcastle to South Shields railway at a point 15 metres west of the bridge carrying that railway over the Leamside branch railway.

Work No. 1C—A railway (390 metres in length) commencing by a junction with Work No. 1A at the eastern end of the viaduct carrying that work over the said Leamside branch railway, passing eastwards and terminating by a junction with the Newcastle-bound track of the Newcastle to Hartlepool railway of Railtrack at a point 1 metre west of the bridge carrying Wardley Lane over that railway.

Work No. 1D—A railway (380 metres in length) commencing by a junction with the Newcastle-bound track of the said Newcastle to South Shields railway at a point 65 metres east of the bridge carrying that railway over the said Leamside branch railway, passing north-eastwards over the bridge carrying the said Newcastle to South Shields railway over the said Newcastle to Hartlepool railway, then eastwards beneath Work No. 1A and terminating by a junction with the Sunderland-bound track of the said Newcastle to Hartlepool railway at a point 2 metres west of the bridge carrying Wardley Lane over that railway.

In the metropolitan borough of South Tyneside—

Work No. 2—A raising of the level of the track known as Monkton Waggonway, Hebburn, including a reconstruction of the bridge (number 294) carrying that track over the said Newcastle to Hartlepool railway.

Work No. 3—A reconstruction of the bridge (number 293) carrying Mill Lane (B 1306), Hebburn, over the said Newcastle to Hartlepool railway.

Work No. 4—An access road commencing at a point in Station Road, Brockley Whins, 44 metres north-east of the eastern end of the steps leading to Nailsworth Close, passing eastwards and terminating at a point 96 metres north of the northern end of the bridge carrying the footpath from Brisbane Avenue to Cotswold Lane over the river Don together with a turning-head at the point of termination.

Work No. 4A—A realignment and improvement of Station Road and Station Approach, East Boldon, commencing at a point in Station Approach 47 metres north-east of the existing East Boldon level crossing, passing south-westwards across the said Newcastle to Hartlepool railway and terminating at a point in Station Road 50 metres south-west of that level crossing.

In the city of Sunderland—

Work No. 5—A reconstruction of the bridge (number 272) carrying Shields Road (A 1018), Seaburn, over the said Newcastle to Hartlepool railway.

Work No. 6—A reconstruction of the bridge (number 271) carrying Station Road, Seaburn over the said Newcastle to Hartlepool railway.

Work No. 7A—A road commencing at a point in Sheepfolds North, Monkwearmouth, 70 metres east of the junction of Hay Street with Sheepfolds North, passing southwards and terminating at a point adjacent to Sheepfolds South 15 metres south of the junction of that road with Sheepfolds Road.

Work No. 7B—A road commencing at a point in Sheepfolds Road 75 metres west of its junction with North Bridge Street (A 1018), passing south-eastwards and terminating by a junction with Work No. 7A at its termination.

Work No. 8—A railway (295 metres in length), being a lowering of the track of part of the Newcastle to Hartlepool railway, commencing by a junction with that railway on the Monkwearmouth Bridge carrying the railway over the river Wear at a point 47 metres north of the southern end of that bridge, passing southwards through the Sunderland North tunnel and terminating by a junction with that railway at the entrance to Sunderland Station.

Work No. 9—A railway (2,000 metres in length) commencing by a junction with the Newcastle to Hartlepool railway at a point below the southern side of the bridge carrying the road known as Holmeside over that railway, passing southwards along the course of the former Pallion railway, then south-westwards under Park Lane, in tunnel under the Park Lane/Cowan Terrace car park, then under Stockton Road, continuing westwards under Tunstall Road, New Durham Road, Chester Road, Chester Street East (Work No. 9C) and Hylton Road (Work No. 9D) and over Lisburn Terrace and terminating at a point 15 metres north of the junction of Neville Road and Shepherd Street including a subway to carry the footpath (Lisburn Terrace) under the railway.

Work No. 9A—A footbridge over Work No. 9 at the proposed University Station, Sunderland.

Work No. 9B—A footbridge over Work No. 9 between the junction of Chester Terrace North with Chester Terrace and University Precinct, Sunderland.

Work No. 9C—A footbridge over Work No. 9 between St Mark's Crescent and Chester Street East, Sunderland.

Work No. 9D—A reconstruction of Hylton Road bridge, Sunderland, to carry that road over Work No. 9.

Work No. 9E—A footbridge over Work No. 9 between Hadrian Street and Milton Street, Sunderland.

Work No. 10—A railway (3,115 metres in length) commencing by a junction with Work No. 9 at its termination, passing north-westwards along the course of former sidings to the former Pallion railway through the existing tunnel (to be refurbished) under Pallion New Road (B 1405), then along the north side of Pallion New Road, in tunnel under Woodbine Terrace (to be raised), passing westwards along the north side of European Way, then along the course of the former Pallion railway over Keelman's Lane (to be stopped up) and over Keelman's Road (to be stopped up) and terminating at a point 47 metres north of the junction of Floral Dene with Hylton Bank, South Hylton, including a subway to carry the footpath and cycleway (Keelman's Road) under the railway.

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

Work No. 10A—An access road, being a realignment of the existing access road between Pallion Retail Park and Woodbine Terrace, commencing at its existing junction with Woodbine Terrace and terminating at a point in the said access road 150 metres west of its junction with Woodbine Terrace.

Work No. 10B—A footbridge over European Way and Work No. 10 at the proposed Pallion Station, Sunderland.

Work No. 10C—A footbridge over Work No. 10 at Claxheugh Rock, Sunderland.

SCHEDULE 2

Article 7

STATIONS

PART I

EXISTING STATIONS

(1) <i>Area</i>	(2) <i>Location of existing station</i>	(3) <i>Land numbered or otherwise shown on deposited plans</i>
Metropolitan borough of South Tyneside	Brockley Whins	23 to 27.
	East Boldon	28 (part), 29 (part), 30 (part) and 31 to 33.
City of Sunderland	Seaburn	9 and 10 (part).
	Sunderland	Land within limit marked “Limit of land to be used for station alterations”.

PART II

PROPOSED STATIONS

(1) <i>Area</i>	(2) <i>Location of proposed station</i>	(3) <i>Land numbered on deposited plans</i>
Metropolitan borough of South Tyneside	Fellgate	18 to 22b.
City of Sunderland	Roker	12, 14, 18 and 19.
	Monkwearmouth	20, 21 and 24 to 31.
	Civic Centre	48 (part), 49 to 51 and 52 (part).
	University	62 (part), 63 and 64.

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(1) <i>Area</i>	(2) <i>Location of proposed station</i>	(3) <i>Land numbered on deposited plans</i>
	Millfield	91 (part), 97 (part) and 100 (part).
	Pallion	127 (part), 128 and 130 (part).
	South Hylton	142 (part), 143 to 145 and 146 (part).

SCHEDULE 3

Article 9

STREETS TO BE STOPPED UP ETC.

NOTE: In this Schedule, and in Schedule 4 to this Order, references to a “footpath and cycleway” include (and in the cases of column (4) of Part I of this Schedule and column (2) of Schedule 4 exclusively mean) a way over which there is a right of way for both pedestrians and cyclists.

PART I

STREETS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

(1) <i>Area</i>	(2) <i>Street to be stopped up</i>	(3) <i>Extent of stopping up</i>	(4) <i>New street to be substituted</i>
Metropolitan borough of Gateshead	Footpath at Pelaw Junction (adjacent to Leamside branch railway)	Between points A1 and A2	Diversion between points A1, A3 and A2.
Metropolitan borough of South Tyneside	Footpath between Pathside and Durham Drive, Fellgate	Between points B1 and B2	Diversion between points B3 and B2.
	Station Road, Brockley Whins	Between points A and B	Work No. 4.
	Footpath between Station Road and footpath south of Brisbane Avenue footbridge	Between points B and D1	Footway to be provided between points C1 and D2; and footpath to be provided between points D2 and D3.
	Station Road/Station approach and subway, East Boldon	Between points A and B	Work No. 4A.
City of Sunderland	Sheepfolds Road	Between points A and B	

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(1) <i>Area</i>	(2) <i>Street to be stopped up</i>	(3) <i>Extent of stopping up</i>	(4) <i>New street to be substituted</i>
	Sheepfolds South	Between points C and D	Works Nos. 7A and 7B.
	Unnamed Road	Between points E and F	
	Footpath at Monkwearmouth	Between points E3 and E5	Footway to be provided between points E3 and E4.
	Footpaths and cycleways on former Pallion railway (Sunderland Technology Park to New Durham Road)	Between points— G1, G3, G4 and G11; and G2 and G3	Diversion between points G1, G2 and G11.
		Between points— G4, G5, G8 and G9; G5, G6 and G8; G7 and G8; G5 and G7; and G1, F2 and G7	Work No. 9A.
		Between points G7 and G10	Diversion between points G7 and G10.
	Footpaths and cycleways on former Pallion railway (University Precinct)	Between points— G17, G15, G14, G16 and G17; and G15 and G16	Work No. 9B.
	Footpaths and cycleways on former Pallion railway (University Precinct to Hylton Road)	Between points G14 and H1	Diversion between points G15 and H16.
	Chester Street East/St Mark's Crescent	Between points A and B	Work No. 9C.
	Albert Road (parking bay)	Between points C and D	Parking bay between points E and F.
	Footpath and cycleway between Hadrian Street and Milton Street	Between points H9 and H10	Work No. 9E.
	Access road between Pallion Retail Park and Woodbine Terrace	Between points A and B	Work No. 10A.
	Footway (part paved area, Woodbine	Between points J8, E, F and J5	Footway between points J8 and J13; footpath between

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(1) <i>Area</i>	(2) <i>Street to be stopped up</i>	(3) <i>Extent of stopping up</i>	(4) <i>New street to be substituted</i>
	Terrace/European Way)		points J13 and J7; and footpath between points J8 and J7.
	Footway (Pallion Subway) and footpath	Between points J1 and J2	Footpath between points J1, J3 and J2.
	Footpaths and cycleway (European Way/Victory Street)	Between points J4, J11 and J12	Footpath and cycleway between points J4 and J9; and footpath between points J9, J11 and J12.
	Footpath and cycleway (European Way)	Between points J11 and J10	Footpath and cycleway between points J9 and J3.
	Footway (European Way)	Between points J5 and J6	Footpath and cycleway between points J7 and J6.
	Footpaths and cycleways on former Pallion railway (European Way to Keelman's Lane)	Between points K1 and K2 Between points K4 and K5	Diversion between points J6, K1 and K3. Footpath between points K6 and K7.
		Between points— K2 and L3; and L17 and L4	Diversion between points K3, L1 and L5.
		Between points— L14 and L15; and K2 and K8	Footpaths between points— L14 and L16; and K3 and K8; and Work No. 10C.
	Footpath and cycleway on former Pallion railway (between Keelman's Lane and Keelman's Road)	Between points L5 and L9	Diversion between points L5 and L13.
	Keelman's Lane	Between points L5 and L6	Footpath and cycleway between points L5 and L6.
	Keelman's Road	Between points L7 and L10	Footpath and cycleway between points L7, L8 and L13 passing in subway (part of Work No. 10) between points L8 and L13.
	Footpaths and cycleways on former	Between points L9 and L12	Diversion between points L8 and L11.

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(1) <i>Area</i>	(2) <i>Street to be stopped up</i>	(3) <i>Extent of stopping up</i>	(4) <i>New street to be substituted</i>
	Pallion railway (Keelman's Road to South Hylton)		
	Footpath (South Hylton)	Between points M9 and M11	Footpath between points M9 and M10.

PART II

STREETS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

(1) <i>Area</i>	(2) <i>Street to be stopped up</i>	(3) <i>Extent of stopping up</i>
City of Sunderland	Footpaths and cycleway on former Pallion railway (Stockton Road to University Precinct)	Between points— F1 and F2; F3 and F4; F5 and F6 (steps); and F2, G5 and G14.
	Footpath and cycleway (Chester Road)	Between points G12 and G13.
	Footpath and cycleway on former Pallion railway (Chester Street East/St Mark's Crescent)	Between points— G19 and G18; and G20 and G21 (steps).
	Footpath and cycleway on former Pallion Railway (Hylton Road to Jobling House, University of Sunderland)	Between points— H2, H3 and H4; H5, H8 and H11; H6 and H7; H8 and H9; H11 and H12; and H11 and H15.
	Keelman's Lane	Between points L2 and L5.
	Footpaths and cycleways (South Hylton)	Between points— M1 and M2; M5 and M6; and M7 and M8.

PART III

STREET IN WHICH VEHICULAR RIGHTS ONLY ARE TO BE EXTINGUISHED

(1) <i>Area</i>	(2) <i>Street to be affected</i>	(3) <i>Extent of stopping up</i>
City of Sunderland	Albert Road	Between points A and B.

SCHEDULE 4

Article 10

NEW STREETS TO BE PROVIDED

(1) <i>Area</i>	(2) <i>Street to be provided</i>
Metropolitan borough of South Tyneside (Brockley Whins Station)	Footpaths between points— C2 and C3; C2 and C4; C4 and C5; and C4 and C6.
City of Sunderland (Roker Station) (Lisburn Terrace)	Footpath between points E1 and E2. Footpath, in subway (part of Work No. 9), to be lowered between points H13 and H17.
(Jobling House, University of Sunderland)	Footpath and cycleway between points H14 and H15.
(Woodbine Terrace)	Road to be raised between points C and D.
(South Hylton)	Footpath and cycleway between points M3 and M4.

SCHEDULE 5

Article 11

STREETS TO BE TEMPORARILY STOPPED UP

(1) <i>Area</i>	(2) <i>Street to be temporarily stopped up</i>
Metropolitan borough of Gateshead	Wardley Lane
Metropolitan borough of South Tyneside	Monkton Waggonway Mill Lane (B 1306) Pathside, Fellgate Station Road, East Boldon Station Approach, East Boldon
City of Sunderland	Shields Road (A 1018) Alston Crescent, Seaburn Station Road, Seaburn Portobello Lane, Roker Newcastle Road (A 1018) North Bridge Street (A 1018) Sheepfolds North, Monkwearmouth Sheepfolds Road, Monkwearmouth Sheepfolds South, Monkwearmouth Matlock Street, Monkwearmouth

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

(1) Area	(2) <i>Street to be temporarily stopped up</i>
	Park Lane, Sunderland
	Cowan Terrace, Sunderland
	Stockton Road, Sunderland
	Boughton Street car park, Sunderland
	Tunstall Terrace, Sunderland
	Tunstall Road, Sunderland
	Tunstall Terrace West, Sunderland
	New Durham Road (A 690)
	Durham Road, Sunderland
	Back Summerhill, Sunderland
	Chester Road (A 183)
	Back Chester Terrace, Sunderland
	East Cleft Road, Sunderland
	Unnamed road (former Hetton Colliery Railway), Sunderland
	Back Tintern Street, Sunderland
	Back Chester Terrace North, Sunderland
	Chester Street East, Sunderland
	St Mark's Crescent, Sunderland
	Hylton Road, Millfield
	Milton Street, Millfield
	Hadrian Street, Millfield
	Albert Road, Millfield
	Ailesbury Street, Millfield
	Shepherd Street, Millfield
	Back Shepherd Street, Millfield
	Neville Road, Pallion
	Back Neville Road, Pallion
	Lisburn Terrace, Pallion
	Pallion New Road (B 1405)
	Woodbine Terrace, Pallion
	Pallion Retail Park access road, Pallion
	Pallion Subway, Pallion
	European Way, Pallion

(1) <i>Area</i>	(2) <i>Street to be temporarily stopped up</i>
	High Street, South Hylton

SCHEDULE 6

Article 21(2)

ADDITIONAL LANDS WHICH MAY BE ACQUIRED OR USED

(1) <i>Purpose</i>	(2) <i>Location</i>	(3) <i>Land numbered on deposited plans</i>
In the metropolitan borough of Gateshead		
Provision of a working site and access thereto and thereafter associated facilities including access and landscaping	Land at Pelaw Junction east of Works Nos. 1A and 1D	6a (part), 6b (part), 7 (part) and 8 (part).
In the metropolitan borough of South Tyneside		
Provision of a station and access thereto and associated facilities including landscaping, car parking and a footpath	Land at Fellgate	18 to 22b.
Provision of a station and associated facilities including landscaping and car parking	Brockley Whins Station and adjoining land	25 (part).
Provision of a station and associated facilities including landscaping and car parking	East Boldon Station and adjoining land	28 (part), 30 (part), 31 (part), 32 and 33 (part).
In the city of Sunderland		
Provision of an electricity substation and access thereto	Land on north-eastern side of Newcastle Road (A 184)	1 to 3a.
Provision of a station and access thereto and associated facilities including landscaping	Seaburn Station and adjoining land	9 (part).
Provision of a station and access thereto and associated facilities including landscaping, car parking and a footpath	Land adjoining Newcastle Road (A 1018) and Portobello Lane, Roker	12, 13, 13a, 14, 16 (part), 18 and 19.
Provision of road improvement works	Land adjacent to Portobello Lane, Roker	15.

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(1) <i>Purpose</i>	(2) <i>Location</i>	(3) <i>Land numbered on deposited plans</i>
Provision of a station and access thereto and associated facilities including landscaping, car parking and a footway	Land adjoining North Bridge Street (A 1018), Monkwearmouth	20, 21, 24, 25, 25a, 26 (part), 27 (part), 28 (part), 29 (part) and 31 (part).
Provision of access for maintaining Work No. 10	Land east of Woodbine Terrace (adjacent to site of former shipbuilding yard)	115 (part).
In the city of Sunderland		
Provision of rock ground anchors in constructing and thereafter maintaining Work No. 10	Pallion New Road (B 1405)	117 (part).
Provision of access to electricity substation	Land east of Woodbine Terrace (adjacent to site of former shipbuilding yard)	118 (part) and 121.
Provision of a working site and thereafter associated facilities including landscaping and footpaths and cycleways	Land adjoining European Way, Pallion	125.
Provision of rock ground anchors in constructing and thereafter maintaining Work No. 10	European Way, Pallion	126.
Provision of a footpath	Land east of Claxheugh Rock (adjacent to European Way) and footway (European Way)	126a and 132 (part).
Provision of station access and associated facilities including landscaping, car parking and a footpath and access for maintenance purposes	Land adjoining High Street, South Hylton	142 (part), 145 (part) and 146 (part).

SCHEDULE 7

Article 24

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

Compensation enactments

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

2.—(1) Without prejudice to the generality of paragraph 1 above, the Land Compensation Act 1973⁽²⁸⁾ shall have effect subject to the modifications set out in sub-paragraphs (2) and (3) below.

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4 below—

- (a) for the words “land is acquired or taken” there shall be substituted the words “a right over land is purchased”; and
- (b) for the words “acquired or taken from him” there shall be substituted the words “over which the right is exercisable”.

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

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

Adaptation of 1965 Act

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

- (a) the right acquired or to be acquired; or
- (b) the land over which the right is or is to be exercisable.

(2) Without prejudice to the generality of sub-paragraph (1) above, Part I of the 1965 Act shall apply in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

4. For section 7 of the 1965 Act (measure of compensation) there shall be substituted the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Act regard shall be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of that land by reason of injurious affection of other lands of the owner held with that land by the exercise of the powers conferred by this or the special Act.”.

5. For section 8 of the 1965 Act (provisions as to divided land) there shall be substituted the following—

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

(28) 1973 c. 26.

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

- (a) a question of disputed compensation in respect of the purchase of the right would apart from this section fall to be determined by the Lands Tribunal (“the tribunal”); and
- (b) before the tribunal has determined that question the person satisfies the tribunal that he has an interest which he is able and willing to sell in the whole of the relevant land and—
 - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased without material detriment to that land; or
 - (ii) where that land consists of such a park or garden, that the right cannot be purchased without seriously affecting the amenity or convenience of the house to which that land belongs;

the Tyne and Wear Passenger Transport (Sunderland) Order 1998 (“the Order”) shall, in relation to that person, cease to authorise the purchase of the right and be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice shall be deemed to have been served in respect of that interest on such date as the tribunal directs.

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

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

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

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

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

7. Section 11 of the 1965 Act (powers of entry) shall be so modified as to secure that, as from the date on which the acquiring authority have served notice to treat in respect of any right, they have power, exercisable in the like circumstances and subject to the like conditions, to enter for the purpose of exercising that right (which shall be deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act shall be modified correspondingly.

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

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any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

9. Section 22 of the 1965 Act (protection of acquiring authority’s possession where by inadvertence an estate, right or interest has not been got in) shall be so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 8

Article 28

LANDS NOT TO BE ACQUIRED COMPULSORILY

(1) <i>Area</i>	(2) <i>Land numbered or otherwise shown on deposited plans</i>
Metropolitan borough of Gateshead	1, 9, 10, 11 and 12.
Metropolitan borough of South Tyneside	19, 21, 22, 22a, 24, 26, 27 and 33. So much of the land numbered 23 as comprises planted areas.
City of Sunderland	7, 13a, 25, 56, 59, 62, 63, 64, 78, 80, 85, 100, 112, 123, 125, 131a, 132, 133, 133a, 136, 137, 140, 140a, 141, 142 and 145. Land within the limits marked “Limit of land to be used for station alterations”. Land within the limits marked “Limit of listed buildings”. So much of the land numbered 28 as comprises landscaped and grassed areas and footpath. So much of the land numbered 57 as comprises public footpath and cycleway and landscaped area. So much of the land numbered 60 as comprises public footpath and cycleway and landscaped area. So much of the land numbered 72 as comprises public footpath and cycleway and landscaped area. So much of the land numbered 83 as comprises public footpath and cycleway and landscaped area.

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SCHEDULE 9

Article 29

LANDS OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) <i>Purpose for which temporary possession may be taken</i>	(2) <i>Location</i>	(3) <i>Land numbered on deposited plans</i>
In the metropolitan borough of Gateshead		
Provision of a working site for construction purposes and access thereto	Land at Pelaw Junction adjoining and west of Wardley Lane	6b (part), 7 (part) and 8 (part).
In the metropolitan borough of South Tyneside		
Provision of access for construction purposes	Monkton Waggonway	8 (part).
Provision of a working site for construction purposes and access thereto	Land adjoining Mill Lane (B 1306) (site of former Coke Works)	9 and 10.
In the city of Sunderland		
Provision of working space for construction purposes	Alston Crescent/Station Road, Seaburn	9a and 10 (part).
Provision of working space for construction purposes	Portobello Lane/Newcastle Road (A 1018)	15, 16 (part) and 17.
Provision of working space for construction purposes	North Bridge Street (A 1018)/Sheepfolds North	22 and 23 (part).
Provision of working sites for construction purposes and access thereto	Lands at Matlock Street	33 (part).
Provision of working space for construction purposes	Boughton Street car park	54.
Provision of working space for construction purposes	Tunstall Terrace	55.
Provision of working space for construction purposes	Tunstall Terrace West	58.
Provision of a working site for construction purposes and access thereto	Land adjacent to New Durham Road and University of Sunderland	62 (part).
Provision of a working site for construction purposes	Land at Burn Field Park	62 (part).
Provision of working space for construction purposes and access thereto	Durham Road	65.
Provision of working space for construction purposes	Land at Durham Road	66 (part).

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(1) <i>Purpose for which temporary possession may be taken</i>	(2) <i>Location</i>	(3) <i>Land numbered on deposited plans</i>
Provision of working space for construction purposes	Back Summerhill	67.
Provision of working space for construction purposes	Land at Chester Oval	69 and 70.
Provision of working space for construction purposes	Back Chester Terrace	74.
Provision of working space for construction purposes	East Cleft Road	75.
Provision of working space for construction purposes	Land at University Precinct, Chester Road	76.
Provision of working space for construction purposes	Land at Carisbrooke Court	77 (parts).
Provision of working space for construction purposes	Back Tintern Street	81.
In the city of Sunderland		
Provision of working space for construction purposes	Back Chester Terrace North	82.
Provision of working space for construction purposes	Lands at former Handel Street/ Leopold Street and at Hylton Road	87 (parts).
Provision of working space for construction purposes and access thereto	Land at Hylton Road	90 (part).
Provision of working space for construction purposes	Land at Wear Glass Works, Millfield	103 (part).
Provision of a working site for construction purposes and access thereto	Land at Neville Road/ Shepherd Street	104 (part), 105, 106 (part) and 107 (part).
Provision of a working site for construction purposes	Land at Lisburn Terrace	107 (part).
Provision of working space for construction purposes and access thereto	Land at Lisburn Terrace	108 (part).
Provision of working space for construction purposes	Land at Pallion New Road	114.
Provision of a working site for construction purposes and access thereto	Land east of Woodbine Terrace (adjacent to site of former shipbuilding yard)	115 (part), 118 (part) and 121.
Provision of working space for construction purposes	Land at Pallion Subway	123.

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(1) <i>Purpose for which temporary possession may be taken</i>	(2) <i>Location</i>	(3) <i>Land numbered on deposited plans</i>
Provision of working space for construction purposes	Pallion Subway, Pallion	124 (part).
Provision of a working site for construction purposes and access thereto	Land at Pallion Retail Park	127 (part) and 129 (part).
Provision of a working site for construction purposes and access thereto	Land east of Claxheugh Rock (adjacent to European Way)	132 (part).
Provision of access for construction purposes	Access roads (Brussels Road and Luxembourg Road) and land at Pallion West Industrial Estate	134, 134a and 135.
Provision of working space for construction purposes	High Street, South Hylton	146.

SCHEDULE 10

Article 44

PROVISIONS RELATING TO STATUTORY UNDERTAKERS ETC.

Apparatus of statutory undertakers etc. on land acquired

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

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

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

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

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

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

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

(6) In this paragraph—

“public telecommunications operator” means—

- (a) a person authorised, by a licence to which section 9 of the Telecommunications Act 1984⁽²⁹⁾ applies, to run a public telecommunications system, or
- (b) a person to whom the telecommunications code has been applied pursuant to section 10 of that Act; and

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

Apparatus of statutory undertakers etc. in stopped up streets

2.—(1) Where a street is stopped up under article 9 of this Order any statutory utility whose apparatus is under, in, upon, over, along or across the street shall have the same powers and rights in respect of that apparatus, subject to the provisions of this paragraph, as if this Order had not been made.

(2) Where a street is stopped up under article 9 of this Order any statutory utility whose apparatus is under, in, upon, over, along or across the street may where reasonably necessary for the efficient operation of the undertaking of the statutory utility and, if reasonably requested so to do by the undertaker, shall—

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

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

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

(4) If in the course of the execution of relocation works under sub-paragraph (2) above—

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the

(29) 1984 c. 12.

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existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this paragraph would be payable to the statutory utility by virtue of sub-paragraph (3) above shall be reduced by the amount of that excess.

(5) For the purposes of sub-paragraph (4) above—

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

(6) An amount which apart from this sub-paragraph would be payable to a statutory utility in respect of works by virtue of sub-paragraph (3) above (and having regard, where relevant, to sub-paragraph (4) above) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7½ years earlier so as to confer on the statutory utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Sub-paragraphs (3) to (6) above shall not apply where the authorised works constitute major transport works or major highway works for the purposes of Part III of the 1991 Act (including that Part as applied by article 4 above), but instead—

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

(8) In this paragraph—

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

“relocation works” means works executed, or apparatus provided, under sub-paragraph (2) above; and

“statutory utility” means a statutory undertaker for the purposes of the Highways Act 1980(30) or a public telecommunications operator as defined in paragraph 1(6) above.

Application of telecommunications code

3.—(1) Paragraph 23 of the telecommunications code shall apply for the purposes of the authorised works, save—

- (a) insofar as such works are regulated by the 1991 Act or any regulation made under that Act; or
- (b) where the undertaker exercises a right under subsection (4)(b) of section 272 of the 1990 Act or under an order made under that section to remove telecommunications apparatus.

(2) In this paragraph and in paragraph 4 below “telecommunications code” means the telecommunications code contained in Schedule 2 to the Telecommunications Act 1984 and “telecommunications apparatus” has the same meaning as in the telecommunications code.

4. The temporary stopping up or diversion of any street under article 11 above shall not affect any right of a public telecommunications operator under paragraph 9 of the telecommunications code

(30) 1980 c. 56.

in respect of any telecommunications apparatus which at the time of the stopping up or diversion is in the street.

For protection of Railtrack PLC

5.—(1) The provisions of this paragraph shall have effect save in so far as may be otherwise agreed between Railtrack and the undertaker.

(2) The undertaker shall not compulsorily enter on, acquire or take temporary possession of, or acquire new easements or other rights in or over, designated property, save that it may, with the consent of Railtrack, exercise the powers of article 18, article 29 and article 30 above, or (subject to sub-paragraph (3) below) article 24 above in relation to any such property.

(3) The undertaker shall not, under article 24, acquire any right in or over any designated property comprising a railway facility or network installation which are capable of being acquired by means of an access agreement, but shall acquire any such rights which it requires by means of an access agreement entered into in accordance with the provisions of Part I of the 1993 Act.

(4) Where so required by the engineer, the undertaker shall, to the reasonable satisfaction of the engineer, fence off (whether on a temporary or permanent basis or both) any part of the specified works from designated property.

(5) Except with the consent of Railtrack, the undertaker shall not in the exercise of the powers of this Order interrupt or prejudicially affect pedestrian or vehicular access to any station of Railtrack or any other designated property.

(6) In relation to any rights over land comprising rights, belonging to Railtrack, of access to any designated property, the powers conferred by sections 271 and 272 of the 1990 Act, as applied by paragraph 1 above, to extinguish those rights shall not apply unless the undertaker makes available to Railtrack some suitable alternative means of access to the designated property in question.

(7) The undertaker shall not exercise the powers of section 271 or 272 of the 1990 Act, as applied by paragraph 1 above, so as to require the removal of any apparatus comprising designated property (or extinguish any rights relating to that apparatus), but such apparatus may be removed (or rights extinguished) with the consent of Railtrack.

(8) The consent of Railtrack under sub-paragraphs (2), (5), (6) and (7) above shall not be unreasonably withheld but may be given subject to reasonable conditions.

(9) The undertaker shall, before commencing the specified works, furnish to Railtrack proper and sufficient plans thereof for the approval of the engineer, whose approval shall not be unreasonably withheld, and shall not commence any specified works until plans thereof have been approved in writing by the engineer or settled by arbitration.

(10) If, within 56 days after plans have been furnished to Railtrack under sub-paragraph (9) above, the engineer shall not have intimated his disapproval thereof and the grounds of his disapproval, he shall be deemed to have approved the same.

(11) If within 56 days after such plans have been furnished to Railtrack, Railtrack shall give notice to the undertaker that Railtrack desire themselves to construct any part of the specified works which in the opinion of the engineer will or may affect the stability of designated property or the safe operation of Railtrack's railways, then, if the undertaker desires such part of the specified works to be constructed, Railtrack shall construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled as aforesaid.

(12) Upon signifying his approval of the plans the engineer may specify any protective works, whether temporary or permanent, which in his opinion should be carried out before the commencement of the construction of the specified works to ensure the safety or stability of designated property or the continuation of the safe and efficient operation of the railways of Railtrack

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or the services of operators using the same and such protective works as may be reasonably necessary for those purposes shall be constructed by Railtrack to the reasonable satisfaction of the undertaker or (if Railtrack so desires) by the undertaker with all reasonable dispatch and the undertaker shall not commence the construction of the specified works until the engineer shall have notified the undertaker that the protective works have been completed to his reasonable satisfaction.

(13) The undertaker shall not commence—

- (a) the construction of any of the specified works, or
- (b) the carrying out of any works for the maintenance of the specified works in so far as such works of maintenance affect or interfere with designated property,

unless it shall first have given to the engineer not less than 28 days' notice of its intention to do so, except that works for the maintenance of the specified works may be carried out in an emergency if such notice as is reasonably practicable has been given.

(14) The specified works shall, when commenced, be carried out—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to be approved or settled as aforesaid;
- (b) under the supervision (if given) and to the reasonable satisfaction of the engineer; and
- (c) in such manner as to cause—
 - (i) as little damage to designated property as may be, and
 - (ii) as little interference as may be with the conduct of traffic on any railway of Railtrack and the use by passengers of designated property,

and, if any damage to designated property or any such interference shall be caused by the carrying out of the specified works, the undertaker shall, notwithstanding any such approval as aforesaid, make good such damage and shall pay to Railtrack all reasonable expenses to which they may be put and compensation for any loss which they may sustain by reason of any such damage or interference.

(15) Nothing in sub-paragraph (14) above shall impose any liability on the undertaker with respect to any damage, costs, expenses or loss which is attributable to the act, neglect or default of Railtrack or their servants, contractors or agents.

(16) The undertaker shall at all times afford reasonable facilities to the engineer for access to the specified works during their construction and shall supply him with all such information as he may reasonably require with regard to the specified works or the method of construction thereof.

(17) Railtrack shall at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Railtrack under this paragraph during their construction and shall supply the undertaker with such information as it may reasonably require with regard to such works or the method of construction thereof.

(18) If any alterations or additions, either permanent or temporary, to designated property shall be reasonably necessary during the construction of the specified works or during a period of 12 months after the completion thereof in consequence of the construction of the specified works, such alterations and additions may be effected by Railtrack at a reasonable cost after not less than 28 days' notice in writing (save in case of emergency whereupon the engineer shall give such notice as is reasonable in the circumstances) from the date of submission of plans, programmes and estimates of costs of such alterations and additions having been given to the undertaker, and the undertaker shall pay to Railtrack the cost thereof as certified by the engineer including, in respect of permanent alterations and additions, a capitalised sum representing the increase in the costs which may be expected to be reasonably incurred by Railtrack in maintaining, working and, when necessary, renewing any such alterations or additions.

(19) If the cost of maintaining, working or renewing designated property is reduced in consequence of any such alterations or additions as is mentioned in sub-paragraph (18) above a capitalised sum representing such saving shall be set off against any sum payable by the undertaker to Railtrack under that sub-paragraph.

(20) The undertaker shall repay to Railtrack all costs, charges and expenses reasonably incurred by Railtrack—

- (a) in respect of the approval by the engineer of plans submitted by the undertaker;
- (b) in constructing any part of the specified works on behalf of the undertaker as provided by sub-paragraph (11) above or in constructing any protective works under the provisions of sub-paragraph (12) above including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (c) in respect of the employment of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, watching, lighting and signalling any railway of Railtrack in order to prevent, as far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works;
- (d) resulting from any speed restrictions which may, in the opinion of the engineer, require to be imposed and which may be due to the construction or failure of the specified works or from the substitution, suspension or diversion of railway services which may be necessary for the same reason;
- (e) in respect of any additional temporary lighting of designated property in the vicinity of the works, being lighting made reasonably necessary during and by reason of the construction or failure of the specified works; and
- (f) in respect of the supervision by the engineer of the specified works.

(21) Any additional expenses which Railtrack may reasonably incur in altering, reconstructing or maintaining designated property under any powers existing at the date of the making of this Order by reason of the existence of the specified works shall, provided that 56 days' previous notice of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Railtrack.

(22) The undertaker shall be responsible for and make good to Railtrack all reasonable costs, charges, damages and expenses not otherwise provided for in this paragraph which may be occasioned to or reasonably incurred by Railtrack—

- (a) by reason of the construction or maintenance of specified works or the failure thereof; and
- (b) by reason of any act or omission of the undertaker or of any persons in its employ or of their contractors or others whilst engaged upon the construction or maintenance of the specified works;

and the undertaker shall indemnify Railtrack from and against all claims and demands arising out of or in connection with the construction or maintenance of the specified works or any such failure, act or omission as aforesaid and the fact that any act or thing may have been done in accordance with approved plans, or in accordance with any requirement of the engineer or under his supervision shall not (if it was done without negligence on the part of Railtrack or of any person in its employ or of their contractors or agents whilst engaged upon the construction of the specified works) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(23) Railtrack shall give to the undertaker reasonable notice of any claim or demand as mentioned in sub-paragraph (22) above and no settlement or compromise thereof shall be made without prior consent of the undertaker.

(24) The compensation payable by the undertaker under sub-paragraph (22) above shall include a sum equivalent to the relevant costs.

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(25) Subject to the terms of any agreement between Railtrack and a train operator regarding the timing or method of payment of the relevant costs, Railtrack shall promptly pay to the train operator concerned any sum received by Railtrack by virtue of sub-paragraph (24) above in respect of that train operator.

(26) The obligation of the undertaker under sub-paragraph (24) above to pay the relevant costs shall, in the event of default, be enforceable directly by the train operator concerned.

(27) Nothing in sub-paragraphs (24) to (26) above shall entitle Railtrack or any train operator to any compensation in relation to works which have been transferred to and vested in Railtrack by any agreement made under article 20 above; but nothing in this sub-paragraph shall prejudice any entitlement of Railtrack or any train operator to compensation—

- (a) which has arisen at the date of the transfer and vesting; or
- (b) in respect of the failure of any works resulting from any defect present at the date upon which they are so transferred to and vested in Railtrack.

(28) In this paragraph—

“construction” includes execution, placing and altering and “construct” and “constructed” shall be construed accordingly;

“designated property” means any railway of Railtrack and any works, apparatus and equipment of Railtrack connected therewith and any land held or used by Railtrack for the purposes of such railway or works, apparatus or equipment;

“the engineer” means an engineer appointed by Railtrack;

“plans” includes sections, drawings, calculations, methods of construction, particulars, soil reports, staging proposals and programmes;

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by a train operator as a consequence of any restriction of use of Railtrack’s railway network as a result of the construction or maintenance of the specified works or any failure, act or omission mentioned in sub-paragraph (22) above;

“the specified works” means so much of the authorised works as may be situated within 15 metres of, or may in any way affect, designated property; and

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

and terms which are defined in the 1993 Act shall have the same meanings as in that Act.

6.—(1) Notwithstanding the provisions of article 37 above, the provisions of this paragraph shall have effect except in so far as may be otherwise agreed between Railtrack and the undertaker.

(2) If Railtrack gives notice to the undertaker, at any time prior to the opening of the Sunderland extension for public services operated by the undertaker, informing the undertaker that any designated apparatus is interfering with any specified equipment, the undertaker shall forthwith cease to use its designated apparatus until all necessary alterations and modifications have been carried out—

- (a) by the undertaker, to any designated apparatus, and
- (b) by Railtrack, to any specified equipment,

in order to remove the source of the interference.

(3) If Railtrack gives notice to the undertaker after the opening of the Sunderland extension for public services operated by the undertaker that such interference as is mentioned in sub-paragraph (2) above is taking place, the undertaker and Railtrack shall use their best endeavours to determine what alterations and modifications to any designated apparatus or specified equipment should be carried out in order to remove the source of the interference.

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(4) Any alterations and modifications to any designated apparatus under sub-paragraph (2) above shall be carried out and completed by the undertaker with all reasonable despatch under the supervision (if given) and to the reasonable satisfaction of the engineer and the undertaker shall afford reasonable facilities to the engineer for access to the Sunderland extension during the carrying out of alterations and modifications under this paragraph.

(5) Railtrack shall afford reasonable facilities to the undertaker for access to any specified equipment during the carrying out of any alterations and modifications thereto under this paragraph and such alterations and modifications shall be carried out and completed by Railtrack with all reasonable despatch.

(6) The undertaker shall repay to Railtrack all costs, charges and expenses reasonably incurred by Railtrack—

(a) in carrying out any alterations and modifications to specified equipment under sub-paragraphs (2) and (3) above; and

(b) in respect of any supervision given by the engineer under sub-paragraph (4) above;

and the undertaker shall pay compensation to Railtrack for any loss which it may sustain by reason of any designated apparatus interfering with any specified equipment.

(7) In this paragraph—

“designated apparatus” means any electric lines, circuits, wires, apparatus and other works of any description belonging to or used by the undertaker for the purpose of operating the Sunderland extension;

“the engineer” means an engineer to be appointed by Railtrack; and

“specified equipment” means any wire, line or apparatus from time to time used by Railtrack for the purpose of transmitting electrical energy or of radio, telegraphic, telephonic or electric signalling communications.

For protection of Environment Agency

7.—(1) For the protection of the Environment Agency (in this paragraph referred to as “the Agency”) the following provisions shall, unless otherwise agreed in writing between the undertaker and the Agency, have effect.

(a) (2) (a) Before carrying out under the powers of this Order—

(i) any operation on the banks of any watercourse;

(ii) the erection or raising of any obstruction to the flow of any watercourse which is not part of a main river within the meaning of section 113 of the Water Resources Act 1991⁽³¹⁾; or

(iii) the construction, alteration or replacement of any culvert or any structure designed to contain or divert the flow of any such watercourse in or through any land within the limits of deviation or the further limits;

the undertaker shall furnish to the Agency proper and sufficient plans thereof for the approval of the Agency and shall not carry out any such operation or work otherwise than in accordance with such plans as are approved.

(b) The approval of plans furnished under this sub-paragraph shall not be unreasonably withheld and if, within 2 months of such plans being supplied to the Agency, the Agency does not indicate in writing its disapproval and the grounds of its disapproval, it shall be deemed to have approved the plans as supplied.

(31) 1991 c. 57.

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- (c) For the purposes of this sub-paragraph, “banks” has the meaning given by section 72 of the Land Drainage Act 1991(32) and “plans” includes sections, drawings, specifications, calculations and descriptions.
- (a) (3) (a) Any culvert or any structure designed to contain or divert the flow of any watercourse being a culvert or structure situated within any land within the limits of deviation or the further limits, whether constructed under the powers of this Order or in existence prior to the making hereof, shall be maintained by the undertaker in good repair and condition and free from obstruction.
- (b) Nothing in this sub-paragraph shall have the effect of requiring the undertaker to carry out works of maintenance in respect of any culvert or structure which the Agency or other person is liable to maintain.
- (4) If any operation or work is carried out in contravention of this paragraph the undertaker shall upon receiving notice from the Agency take such action as may be necessary to remedy the effect of the contravention to the Agency’s reasonable satisfaction and in default the Agency may itself take such action as may be necessary and recover the expenses reasonably incurred by it in doing so from the undertaker as a debt due from it to the Agency.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises the Tyne and Wear Passenger Transport Executive to construct works and acquire land and rights in land in the Metropolitan boroughs of Gateshead and South Tyneside, and in the City of Sunderland, for the extension of the Tyne and Wear Metro system from Pelaw to Sunderland and South Hylton. Between Pelaw, where a new interchange will be provided, and Sunderland the existing railway of Railtrack will be adapted for use by Metro trains as well as other services. Between Sunderland and South Hylton a new railway will be constructed largely on the site of the former Pallion railway. Copies of the plans, sections and book of reference mentioned in the Order are available for inspection free of charge during working hours at the offices of the Tyne and Wear Passenger Transport Executive, Cuthbert House, All Saints, Newcastle upon Tyne, NE1 2DA.

(32) 1991 c. 59.