

2001 No. 3682

TRANSPORT AND WORKS, ENGLAND
TRANSPORT, ENGLAND

**The London Underground (East London Line Extension)
(No. 2) Order 2001**

Made - - - - - 19th October 2001

Coming into force - - 9th November 2001

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

And whereas the Secretary of State has 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, 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 11th October 2001;

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

PART I

PRELIMINARY

Citation and commencement

1. This Order may be cited as the London Underground (East London Line Extension) (No. 2) Order 2001 and shall come into force on 9th November 2001.

Interpretation

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

“the 1845 Act” means the Railways Clauses Consolidation Act 1845(b);

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

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

“the 1973 Act” means the Land Compensation Act 1973(e);

“the 1981 Act” means the Acquisition of Land Act 1981(f);

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

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

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

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

“the book of reference” means the book of reference certified by the Secretary of State as

“the book of reference” for the purposes of this Order;

“the Company” means London Underground Limited;

(a) S.I. 1992/2902.

(b) 1845 c. 20.

(c) 1961 c. 33.

(d) 1965 c. 56.

(e) 1973 c. 26.

(f) 1981 c. 67.

(g) 1990 c. 8.

(h) 1991 c. 22.

(i) 1992 c. 42.

“the deposited plans” means the plans certified by the Secretary of State as “the plans” for the purposes of this Order and references to land shown on those plans are references to land so shown in pursuance of rule 7(3) of the Transport and Works (Applications and Objections Procedure) Rules 1992;

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

“enactment” includes any order, byelaw, rule, regulation, scheme or other instrument having effect by virtue of an enactment;

“footpath”, “highway” and “highway authority” have the same meaning as in the Highways Act 1980(a);

“the limits” means the limits of deviation, the lines marked “Limit of Land to be Acquired or Used” and the lines marked “Limit of Land to be Temporarily Used” shown on the deposited plans;

“the limits of deviation” in relation to a work, means the lines marked “Limit of Deviation” shown on the deposited plans;

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

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

“Railtrack” means Railtrack PLC;

“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 tribunal” means the Lands Tribunal; and

“vehicle” has the same meaning as in section 99(5) of the Road Traffic Regulation Act 1984(b).

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

(3) All directions, distances and lengths 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 and length and distances between points on a railway shall be taken to be measured along the railway.

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

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

Incorporation of Railways Clauses Acts

- 3.—(1) The following provisions of the 1845 Act shall be incorporated in this Order—
- section 46 (crossing of roads—level crossings—bridges), except for the words from “Provided always” to the end;
 - 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);

(a) 1980 c. 66.

(b) 1984 c. 27.

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(a);

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) The following provision of the Railways Clauses Act 1863(b) shall be incorporated in this Order—

section 12 (signals, watchmen etc.).

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

“the company” means the Company;

“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.

PART II

WORKS PROVISIONS

Principal powers

Power to construct works

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

(2) Subject to article 5 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) Subject to paragraph (6) below, the Company may from time to time 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, pipes and cables;
- (b) works to erect and construct such houses, warehouses, offices, and other buildings, yards, stations, engines, machinery, apparatus, and other works, and conveniences as the Company thinks fit;
- (c) junctions and communications (including the provision of steps or ramps for the use of persons on foot) with any highway or access way interfered with by, or contiguous with, any of the works described in this paragraph, and works to widen or alter any highway or access way for the purposes of connecting it with any of those works or another highway, or of crossing under or over another highway or access way;
- (d) all such embankments, aprons, abutments, retaining walls, wing walls, culverts and such other works as the Company thinks fit;
- (e) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the scheduled works; and

(a) 1923 c. 20.

(b) 1863 c. 92.

(f) works for the benefit or protection of premises affected by the scheduled works.

(4) Without prejudice to the generality of paragraphs (2) and (3) above, the Company may, in connection with the construction of the scheduled works—

- (a) provide the following streets in the London Borough of Lewisham—
 - (i) a footpath between points F2, F3, F4, F5, F19 and F20;
 - (ii) a footpath between points F21, F9 and F10; and
 - (iii) a footpath between points F18, F22 and F23;
- (b) provide a controlled pedestrian crossing between points F20 and F21 in Surrey Canal Road.

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

(6) Paragraphs (3), (4) and (5) above shall only authorise the carrying out or maintenance of works outside the limits of deviation for the scheduled works shown on the deposited plans if the works are carried out on land specified in columns (1) and (2) of Schedule 2 to this Order for the purpose specified in relation to that land in column (3) of that Schedule.

Power to deviate

5. In constructing or maintaining any of the scheduled works, the Company may—
- (a) deviate laterally from the lines or situations shown on the deposited plans to the extent of the limits of deviation for that work shown on the deposited plans, and
 - (b) deviate vertically from the levels shown on the deposited sections—
 - (i) to any extent not exceeding 5 metres upwards, or
 - (ii) to any extent downwards as may be found necessary or convenient.

Streets

Power to execute street works

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

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

(2) This article is subject to paragraph 3 of Schedule 9 to this Order.

(3) In this article “apparatus” has the same meaning as in Part III of the 1991 Act and includes a sewer, drain or tunnel and any structure for the lodging within that structure of apparatus or any structure required for gaining access to apparatus.

Stopping up of streets and extinguishment of rights

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

(2) No street specified in columns (1) and (2) of Schedule 4 to this Order shall be wholly or partly stopped up under this article unless either—

- (a) the new street to be substituted for it and which is specified in relation to it by reference to the letters and numbers shown on the deposited plans in column (4) of that Schedule has been completed to the reasonable satisfaction of the street authority and is open for use, or

- (b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and thereafter maintained by the Company to the reasonable satisfaction of the street authority between the commencement and termination points of the street to be stopped up until completion of the new street in accordance with sub-paragraph (a) above.

(3) Where a street has been stopped up under this article the Company may, without making any payment therefor but subject to sections 77 to 85E of, and Schedules 1 to 3 to, the 1845 Act (which relate to minerals under railways), appropriate and use for the purposes of its undertaking the street so stopped up.

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

(5) This article is subject to paragraph 2 of Schedule 9 to this Order.

Temporary stopping up of streets

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

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

(2) The Company 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 Company may exercise the powers of this article in relation to the streets specified in columns (1) and (2) of Schedule 5 to this Order to the extent specified in column (3) to that Schedule.

- (4) The Company shall not exercise the powers of this article—
 - (a) in relation to any street specified as mentioned in paragraph (3) above without first consulting the street authority; and
 - (b) in relation to any other street without the consent of the street authority, but such consent shall not be unreasonably withheld.

(5) The provisions of the 1991 Act mentioned in paragraph (6) 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 Company under the powers conferred by this article 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 Company.

- (6) The provisions of the 1991 Act referred to in paragraph (5) 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 regulation);
 - section 77 (liability for cost of use of alternative route); and

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

Access to works

- 9.** The Company may, for the purposes of the authorised works—
 - (a) form and lay out means of access or improve existing means of access in the locations specified in columns (1) and (2) of Schedule 6 to this Order; and
 - (b) with the approval of the highway authority (such approval not to be unreasonably withheld) form and lay out such other means of access or improve existing means of access at such locations within the limits as the Company reasonably requires for the purposes of the authorised works.

Construction and maintenance of new or altered streets

10.—(1) Subject to paragraph (5) below, any street to be constructed under this Order shall be completed to the reasonable satisfaction of the highway authority and shall, unless otherwise agreed, be maintained by and at the expense of the Company for a period of 12 months from its completion and at the expiry of that period by and at the expense of the highway authority.

(2) Subject to paragraph (5) below, 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 Company 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 and the obligation to maintain includes the controlled pedestrian crossing authorised to be constructed under article 4(4) above.

(3) Nothing in this article shall prejudice the operation of section 87 of the 1991 Act (prospectively maintainable highways); and the Company 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.

(4) 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.

(5) Paragraphs (1) and (2) above shall not apply in relation to—

- (a) the structure of any bridge or tunnel carrying a street over or under any railway of the Company;
- (b) the construction and maintenance of Work No. 14; and
- (c) the footpaths constructed, diverted or altered—
 - (i) between points F2, F3, F4, F5, F19 and F20; and
 - (ii) between points F21, F9 and F10.

Construction and maintenance of bridges

11. Notwithstanding any other provision of this Order or any enactment or rule of law the Company may in constructing and maintaining bridges authorised to be constructed under this Order—

- (a) carry Work No. 5 over Surrey Canal Road by means of a bridge which shall not reduce the headway under that bridge to less than 5.30 metres measured between the surface of the road and the underside of that bridge; and
- (b) carry Works Nos. 9, 10, 11 and 14 over Cold Blow Lane by means of bridges which shall not reduce the headway under those bridges to less than 3.65 metres measured between the surface of the lane and the underside of those bridges; and
- (c) carry Work No. 5 over Hornshay Street by means of a bridge which shall not reduce the headway to less than 3.25 metres between the surface of that street and the underside of that bridge.

Agreements with street authorities

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

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

(2) Such an agreement may, without prejudice to the generality of paragraph (1) above—

- (a) make provision for the street authority to exercise 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.

Use of existing works at Surrey Canal Road

13.—(1) If the Company proceeds with the construction of the new bridge it may do either or both of the following—

- (a) hold, use and appropriate such parts of the original bridge as it may require for the purposes of the new bridge or for any purpose connected with or ancillary to its undertaking;
- (b) take down and remove such parts of the original bridge as it does not require for those purposes.

(2) Notwithstanding article 35 below all the powers and obligations conferred or imposed upon the Company by the 1865 Act in relation to the original bridge including any obligation to maintain it shall cease to have effect.

(3) In this article—

“the new bridge” means the bridge to be constructed across Surrey Canal Road as part of Work No. 5;

“the original bridge” means the former railway bridge and such other works and premises authorised by the 1865 Act as are within the limits of deviation for Work No. 5; and

“the 1865 Act” means the East London Railway Act 1865(a).

Supplemental powers

Discharge of water

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

(2) The Company 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 Company 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 Company 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 Company 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(b).

(7) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board, a local authority or a joint planning board;
- (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.

(a) 1865 c. li.
(b) 1991 c. 57.

Safeguarding works to buildings

15.—(1) Subject to the following provisions of this article, the Company may at its own expense and from time to time carry out such safeguarding works to any building lying within—

- (a) the limits of deviation, or
- (b) the land specified in columns (1) and (2) of Part I of Schedule 8 to this Order for the purposes specified in relation to that land in column (3) of that Part of the Schedule relating to the authorised works so specified in column (4) of that Part of the Schedule,

as the Company considers to be necessary or expedient.

(2) Safeguarding works may be carried out—

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

(3) For the purpose of determining how the functions under this article are to be exercised the Company may enter and survey any building falling within paragraph (1) above and any land belonging to it.

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

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

(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 Company shall, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c) 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 44 below.

(7) The Company 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 Company shall compensate the owners and occupiers of the building for any damage sustained by them.

(9) Subject to article 43 below, nothing in this article shall relieve the Company 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 1961 Act.

(11) In this article—

- (a) “building” includes any structure or erection or any part of a building, structure or erection;

- (b) “safeguarding works”, in relation to a building, means—
 - (i) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the construction, maintenance or operation of the authorised works, 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

16.—(1) The Company may for the purposes of this Order—

- (a) survey or investigate any land shown within the limits or which may be affected by the authorised works;
- (b) without prejudice to the generality of sub-paragraph (a) above, make trial holes in such positions as the Company thinks fit on the land to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) 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
- (d) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (c) 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 Company—

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

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

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

Planning permission: supplementary matters

17.—(1) In relation to the application of paragraph (3)(c) of the Second Schedule of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Tree Preservation Order) Regulations 1969^(a) as incorporated in any tree preservation order, any direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to the works authorised by this Order shall be treated as deeming the permission to have been granted on application made under Part III of the 1990 Act.

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

(3) Planning permission which is deemed by a direction under section 90(2A) of the 1990 Act to be granted in relation to works authorised by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act.

^(a) S.I. 1969/17.

^(b) S.I. 1999/1892.

PART III

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

- 18.**—(1) Subject to paragraph (3) below, the Company may acquire compulsorily—
- (a) so much of the land shown on the deposited plans within the limits of deviation for the scheduled works as may be required for the purposes of the authorised works; and
 - (b) so much of the land specified in columns (1) and (2) of Schedule 2 to this Order as may be required for the purpose specified in relation to that land in column (3) of that Schedule;

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

(2) Without prejudice to the generality of paragraph (1) above, the land which may be acquired compulsorily under that paragraph shall include land which is or will be required—

- (a) for use in mitigating the effect on the environment of any of the works authorised by this Order;
- (b) for use in relocating any apparatus which it is expedient to divert or replace in consequence of the carrying out of any of the works authorised by this Order; or
- (c) for the purpose of being given in exchange for land forming part of a common, open space or fuel or field garden allotment which is acquired under paragraph (1) above.

(3) The Company shall not under the powers of this Order acquire compulsorily any interest in the lands delineated on the deposited plans and thereon numbered 63 in the London borough of Lewisham.

(4) In this article—

“apparatus” has the same meaning as in article 6(3) above and includes apparatus belonging to a statutory utility;

“common” includes any land subject to be enclosed under the Inclosure Acts 1845 to 1882(a) and any town or village green;

“fuel or field garden allotment” means any allotment set out as a fuel allotment, or a field garden allotment, under an Inclosure Act;

“open space” means any land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground; and

“statutory utility” means a licence holder within the meaning of Part I of the Electricity Act 1989(b), a public gas transporter within the meaning of Part I of the Gas Act 1986(c), a water undertaker within the meaning of the Water Industry Act 1991(d), a sewerage undertaker within Part I of that Act and any local authority which is a relevant authority for the purposes of section 97 of that Act.

Application of Part I of the Compulsory Purchase Act 1965

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

- (a) as it applies to a compulsory purchase to which the 1981 Act 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 by paragraph (1) above, 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

(a) 1845 c. 118. 1846 c. 70. 1847 c. 111. 1848 c. 99. 1849 c. 83. 1851 c. 10. 1852 c. 79. 1857 c. 31. 1859 c. 43. 1868 c. 89. 1876 c. 56. 1878 c. 56. 1879 c. 37. 1882 c. 15.

(b) 1989 c. 29.

(c) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 c. 45.

(d) 1991 c. 56.

- (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.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

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

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

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

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

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

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

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

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

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

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

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

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

(8) References to the 1965 Act shall be construed as references to that Act as applied to the acquisition of land under article 18 above.

Powers to acquire new rights

21.—(1) Subject to article 18(3) above, the Company may acquire compulsorily such easements or other rights over any land referred to in paragraph (1) (a) or (b) of article 18 above 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 Company acquires a right over land under paragraph (1) above the Company 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.

(4) Without prejudice to the generality of paragraph (1) above, the rights which may be acquired under that paragraph include the acquisition of—

^(a) 1981 c. 66.

- (a) rights for the use of John Williams Close in the London borough of Lewisham to provide train passengers, visitors to the station proposed to be constructed as part of Work No. 5 and visitors to Bridge House Meadows, a means of pedestrian access between that station, Surrey Canal Road and Hornshay Street in the London borough of Lewisham; and
- (b) rights for the use of Juno Way in the London borough of Lewisham to provide occupiers of, and visitors to premises, an alternative means of vehicular access in consequence of the construction by the Company of Works Nos. 9, 10, 11 and 14.

Rights under streets

22.—(1) The Company may enter upon and appropriate so much of the subsoil of any street shown within the limits as may be required for the purposes of the authorised works and may use the subsoil for those purposes or any other purpose connected with or ancillary to its railway undertaking.

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

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

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

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

Temporary possession of land

Temporary use of land for construction of works

23.—(1) The Company may, in connection with the carrying out of the authorised works—

- (a) enter upon and take temporary possession of the land specified in columns (1) and (2) of Part II of Schedule 8 to this Order for the purposes specified in relation to that land in column (3) of that Part of the Schedule relating to the authorised work so specified in column (4) of that Part of the Schedule;
- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on the land;
- (d) use part of the land delineated on the deposited plans and numbered 12 in the London borough of Lewisham, as a temporary alternative route between the points F2 and A1 for the purpose of article 7(2)(b) above until completion of the new footpath to be constructed between points F2 and F3; and
- (e) use the land for the purposes of a working site with access to the working site for construction purposes in connection with the authorised works.

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

(3) The Company 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 authorised works.

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

(5) The Company 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 1961 Act.

(7) Without prejudice to article 43 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 the land referred to in paragraph (1) above.

(9) Where the Company 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 structure or any other erection.

Compensation

Disregard of certain interests and improvements

24.—(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.

Supplementary

Acquisition of part of certain properties

25.—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 19 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 manufactory or of land consisting of a house with a park or garden ("the land subject to the notice to treat"); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the Company 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 Company 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 Company is authorised to acquire compulsorily under this Order.

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

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

the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the Company 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 Company 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 manufactory or of land consisting of a house with a park or garden, the Company 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

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

whichever is sooner.

(2) All private rights of way over land of which the Company takes temporary possession under this Order shall be suspended and unenforceable for as long as the Company 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 1961 Act.

(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.) or paragraph 2 of Schedule 9 to this Order applies.

Time limit for exercise of powers of acquisition

27.—(1) The powers conferred by this Order to acquire land or rights over land compulsorily, and the power conferred by article 23 above to enter upon and take temporary possession of land, shall cease at the end of the period of 5 years beginning on the day on which this Order comes into force.

(2) Paragraph (1) above shall not prevent the Company remaining in possession of land in accordance with article 23 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 transfer undertaking

28.—(1) Notwithstanding any restriction imposed by a relevant enactment on the power of disposal of land by a relevant authority required for the purposes of its undertaking the Company may with the consent of the Secretary of State 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 comprised within the authorised works and any land held by the Company for the purpose of, or in connection with, the authorised works.

(2) Without prejudice to the generality of paragraph (1) above a transfer agreement under paragraph (1) above may provide for—

- (a) the construction, maintenance, use and operation of the authorised works or any part thereof by another person and as to any other matter incidental or subsidiary thereto or consequential thereon; and
- (b) the vesting in another person of all or any of the functions of the Company under this Order.

(3) 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 Company shall, to the extent that the agreement so provides, have effect as references to the transferee.

(4) Without prejudice to the powers of the Company 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.

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

(6) Without prejudice to the generality of paragraph (1) above a transfer agreement may provide for the exercise by a transferee, or the Company and a transferee jointly, of all or any of the powers of the Company (whether under this Order or under any other enactment) in respect of the authorised works or any part thereof and for the transfer to and vesting in a transferee, or the Company and a transferee jointly, of those works or any part thereof together with the rights and obligations of the Company in relation thereto.

(7) Subject to paragraph (1) above, the exercise by a transferee or the Company and a transferee jointly, of any of the powers of this Order shall be subject to all statutory and contractual provisions in relation thereto as would apply if those powers were exercised by the Company alone and accordingly those provisions with any necessary modifications shall apply to the exercise of such powers by another person, or by the Company and a transferee jointly.

(8) Upon expiry of any period specified in a transfer agreement in accordance with paragraph (3) above, or upon a transfer agreement being terminated or otherwise ceasing to have effect, the functions and property of the Company 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 Company, be re-vested in the Company, but such re-vesting shall not make the Company subject to any of the liabilities of the transferee other than any continuing duties imposed by this Order.

(9) 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 Company'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 Company 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.

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

(11) Within 21 days of the re-vesting in the Company of any property or functions pursuant to paragraph (8) or (10) above or the reversion to the Company of any duty, rights or property pursuant to paragraph (9) above, the Company shall serve notice on the Secretary of State, providing him with particulars of the re-vesting or reversion concerned.

(12) In this article, unless the context otherwise requires—

“the 1984 Act” means the London Regional Transport Act 1984(a);

“the 1999 Act” means the Greater London Authority Act 1999(b);

“functions” includes powers, duties and obligations;

“relevant enactment” means the 1984 Act or, as the case may be, the 1999 Act;

“relevant authority” means London Regional Transport, Transport for London, and if the context so requires the Mayor of London and the Greater London Authority;

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

“transfer agreement” means an agreement entered into under paragraph (1) above.

Agreements with Railtrack

29.—(1) Without prejudice to article 28 above, the Company and Railtrack may with the consent of the Secretary of State 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 those works; and

(b) any works required for the purposes of or in connection with the authorised works;

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

(2) Any agreement made pursuant to the powers conferred by this article may contain such incidental, consequential or supplementary provisions as may be so agreed, including (but without prejudice to the generality of the foregoing) provisions—

(a) with respect to the defraying of, or the making of contributions towards, the cost of such works or alteration or adaptation or the costs of such construction, maintenance, use and operation as are referred to in paragraph (1) above by the Company or by Railtrack or by the Company and Railtrack jointly; and

(b) for the exercise by Railtrack, or by the Company, or by Railtrack and the Company jointly, of all or any of the powers and rights of Railtrack and the Company (as the case may be) in respect of any of the authorised works and any works required for the purposes thereof or in connection therewith.

(3) The exercise by the Company or Railtrack or by the Company and Railtrack jointly, of any powers and rights under any enactment or contract pursuant to any such agreement as is authorised by paragraph (2) above shall be subject to all statutory and contractual provisions relating thereto as would apply if such powers and rights were exercised by the Company or Railtrack (as the case may be) alone, and accordingly such provisions shall with any necessary modifications, apply to the exercise of such powers and rights by the Company or Railtrack, or by the Company and Railtrack jointly, as the case may be.

(a) 1984 c. 32.

(b) 1999 c. 29.

(4) The Company and Railtrack may enter into, and carry into effect, agreements for the transfer to and vesting in Railtrack or the Company, or the Company 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 of the authorised works or in connection with such works;

together with any rights and obligations (whether or not statutory) of Railtrack or the Company relating thereto.

(5) In this article “the Company” means the Company or a transferee other than Railtrack under a transfer agreement, within the meaning of article 28 above.

Obstruction to construction

30. Any person who, without reasonable excuse, obstructs any person acting under the authority of the Company in setting out the lines of the scheduled works, or in constructing any authorised work or who interferes with, moves or removes any apparatus belonging to any such person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Proceedings in respect of statutory nuisance

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

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

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

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

shall not apply where the consent relates to the use of premises by the Company for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to construction or maintenance of the authorised works.

Control of construction sites: appeals

32. Sections 60 (control of noise on construction sites) and 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974 shall have effect, in relation to works carried out in exercise of the powers conferred by this Order, as if in subsection (7) of each section (appeal against failure to give consent or the giving of qualified consent) for the words “a magistrates’ court” there were substituted the words “the Secretary of State”.

Statutory undertakers etc.

33. The provisions of Schedule 9 to this Order shall have effect.

(a) 1990 c. 43.
(b) 1974 c. 40.

Protective provisions

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

As to application of certain railway enactments

35.—(1) Any enactment by which any railway or former railway of Railtrack comprised within the designated lands was authorised shall have effect subject to the provisions of this Order.

(2) Nothing in paragraph (1) above shall prejudice any express statutory provision for—

- (a) the protection of the owner, lessee or occupier of any property which is specifically designated property in such statutory provision; or
- (b) the protection or benefit of any public trustees or commissioners, corporation or other person, specifically named in such provision.

(3) In this article “designated lands” means any land described in the book of reference which is owned by Railtrack.

For the protection of Railtrack

36. If the powers of the Company under this Order to construct the authorised works or any part of those works are exercised by the Company or are transferred to another person other than Railtrack by virtue of a transfer agreement under article 28 above, the provisions of Schedule 11 to this Order shall apply for the protection of Railtrack.

For the protection of the Company in the event of transfer

37. If the powers of the Company under this Order to construct the authorised works or any part of those works are transferred to another person by virtue of a transfer agreement under article 28 above, the provisions of Schedule 12 to this Order shall apply for the protection of the Company.

Maintenance of approved works etc.

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

Public open space

39.—(1) As from the later of—

- (a) the date on which this Order comes into force; or
- (b) the date on which the special category land is vested in the Company; or
- (c) the date on which the exchange land is vested in the Company;

the exchange land shall vest in the London borough of Lewisham.

(2) The vesting of the exchange land in the London borough of Lewisham shall—

- (a) be subject to the like rights, trusts and incidents as attached to the special category land; and

(a) S.I. 1994/157.

(b) the special category land shall thereupon be discharged from all rights trusts and incidents to which it was previously subject.

(3) In this article—

“the special category land” means the land delineated on the deposited plans and thereon numbered 66 in the London borough of Lewisham; and

“the exchange land” means the land delineated on the deposited plans and thereon numbered 66a, 67, 68, 70, 74a and 75 in the London borough of Lewisham.

Disapplication of land designated as a strategic freight site

40.—(1) As from the date on which the relevant land is acquired or appropriated for the purposes of this Order the designation of that land as a strategic freight site shall cease to have effect.

(2) In this article—

“designation as a strategic freight site” means designation as such a site for the purpose of the lists of strategic freight sites which Railtrack is required to keep pursuant to any scheme and any agreement entered into pursuant to section 85 and section 91(1)(c) of the Railways Act 1993(a);

“the relevant land” means the land delineated on the deposited plans and numbered 101, 105, 106 and 108 in the London borough of Lewisham.

Certification of plans etc.

41. The Company 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 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

42.—(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(b) 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.

(a) 1993 c. 92.

(b) 1978 c. 30.

No double recovery

43. 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.

Arbitration

44. 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
Transport, Local Government and the Regions

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SCHEDULES

SCHEDULE 1

Article 4

THE SCHEDULED WORKS

In this Schedule—

“the East London Line” means the railway of the Company that runs between Shoreditch station and New Cross station and New Cross Gate station and the extensions authorised by this Order;

“the London Bridge to New Cross railway” means so much of that part of the railway of Railtrack that runs between London Bridge station and New Cross station;

“the London Bridge to Brockley railway” means so much of that part of the railway of Railtrack that runs between London Bridge station and Brockley station; and

“the South London Line” means so much of that part of the railway of Railtrack that runs between South Bermondsey station and Queens Road Peckham station.

In the London borough of Southwark and the London borough of Lewisham—

Work No. 1—A railway (547 metres in length) being a deviation of the southbound track of the East London Line commencing in the London borough of Southwark by a junction with the southbound track at a point 11 metres south of the bridge carrying Rotherhithe New Road over the East London Line, passing beneath Work No. 7 (footbridge) and terminating in the London borough of Lewisham by a junction with the southbound track at a point 70 metres south west of the junction of Trundley’s Road with Alloa Road.

Work No. 2—A railway (702 metres in length) being a deviation of the northbound track of the East London Line commencing in the London borough of Southwark by a junction with the northbound track at a point 11 metres south of the bridge carrying Rotherhithe New Road over the East London Line, passing beneath Work No. 7 (footbridge) and passing over Work No. 3 (railway) and terminating in the London borough of Lewisham by a junction with the northbound track at a point 210 metres south west of the junction of Trundley’s Road with Alloa Road.

Work No. 3—A railway (568 metres in length) forming a single track railway commencing in the London borough of Southwark by a junction with Work No. 1 (railway), at a point 60 metres south of the commencement of Work No. 1 (railway), passing beneath Work No. 7 (footbridge), Work No. 2 (railway) and the viaducts carrying the London Bridge to New Cross railway and terminating in the London borough of Lewisham at a point 36 metres north east of the northern abutment of the viaduct carrying the London Bridge to Brockley railway.

Work No. 4—A railway (518 metres in length) forming a single track railway commencing in the London borough of Lewisham by a junction with Work No. 2 (railway) at a point 96 metres south of the commencement of Work No. 2 (railway), passing beneath Work No. 7 (footbridge) and the viaducts carrying the London Bridge to New Cross railway and terminating in the London borough of Lewisham at a point 36 metres north east of the northern abutment of the viaduct carrying the London Bridge to Brockley railway.

In the London borough of Lewisham—

Work No. 5—A railway (928 metres in length) forming a twin track railway commencing by a junction with the termination of Works Nos. 3 and 4 (railways), passing over Surrey Canal Road by means of a new bridge incorporating a station and passing in a southerly direction by means of a cutting across Bridge House Meadows and passing over Hornshay Street by means of a new bridge and terminating by a junction with Work No. 6 (railway) 100 metres north west of the junction of Old Kent Road with Chesterfield Way.

Work No. 6—A railway (237 metres in length) being a realignment of the northbound and southbound tracks of the South London Line railway commencing by a junction with that railway at a point 40 metres south east of the junction of Ilderton Street with Hornshay Street and terminating by a junction with the South London Line railway at a point 62 metres north west of the junction of Old Kent Road with Chesterfield Way.

Work No. 7—A new footbridge including stairs and access ramps carrying a footpath commencing in Trundley’s Terrace and passing over Works Nos. 1, 2, 3 and 4 (railways) and terminating in Oldfield Grove being a replacement for the existing footbridge carrying a footpath that lies between those two streets.

Work No. 8—A lowering of Surrey Canal Road commencing at a point 47 metres west of the junction of Surrey Canal Road with Mercury Way and terminating at a point 224 metres west of that junction.

Work No. 8A—A lowering of the access road leading to Excelsior Industrial Estate commencing at a point 187 metres west of the junction of Surrey Canal Road with Mercury Way and terminating at a point 22 metres south of its commencement.

Work No. 8B—A lowering of the access road leading to Millwall Football Club commencing at a point 161 metres north west of the junction of Surrey Canal Road with Mercury Way and terminating at a point 155 metres west of that junction.

Work No. 8C—A lowering of the access road leading to Orion Business Centre commencing at a point 80 metres north west of the junction of Surrey Canal Road with Mercury Way and terminating at a point 77 metres west of that junction.

Work No. 9—A railway (1285 metres in length) being a deviation of the East London Line commencing by a junction with that railway at a point 190 metres east of the junction of Surrey Canal Road with Landmann Way forming a twin track railway and passing in a southerly direction over Cold Blow Lane by means of a new bridge to the commencement of Work No. 13 (railway) and thereafter by means of a single track railway passing south and to the east of New Cross Gate station and terminating by a junction with the southbound slow line of the London Bridge to Brockley railway at a point 203 metres south east of the junction of New Cross Road with Jerningham Road.

Work No. 10—A railway (830 metres in length) commencing by a junction with Work No. 9 (railway) at a point 210 metres east of the junction of Surrey Canal Road with Landmann Way forming a single track railway and passing in a south westerly direction over Cold Blow Lane by means of a new bridge and passing over the London Bridge to Brockley railway by means of a new bridge and terminating by a junction with the northbound slow line of that railway at a point 190 metres south east of the junction of Robert Lowe Close with Brocklehurst Street.

Work No. 11—A railway (618 metres in length) commencing by a junction with Work No. 9 (railway) at a point 215 metres south east of the junction of Surrey Canal Road with Landmann Way and terminating by a junction with Work No. 9 (railway) at a point 158 metres north east of the junction of Robert Lowe Close with Brocklehurst Street, forming with sidings, a train servicing facility.

Work No. 12—A railway (240 metres in length) forming a single track railway commencing by a junction with Work No. 9 (railway) at a point 82 metres east of the junction of New Cross Road with Jerningham Road and terminating at a point 263 metres south east of the junction of those streets.

Work No. 13—A railway (142 metres in length) forming a single track railway commencing by a junction with Work No. 9 (railway) at a point 155 metres north east of the junction of Robert Lowe Close with Brocklehurst Street and terminating by a junction with the southbound slow line of the London Bridge to Brockley railway at a point 203 metres south east of the junction of those streets.

Work No. 14—A new street commencing at a point 50 metres west of the junction of Cold Blow Lane with Sandford Street forming a vehicular access to the train servicing facility comprised within Work No. 11 (railway) and terminating at a point 117 metres south west of the junction of those streets.

SCHEDULE 2

Articles 4 and 18

ACQUISITION OF CERTAIN LAND

(1) Area	(2) Number of land shown on deposited plans	(3) Purpose for which land may be acquired
In the London borough of Lewisham	71	For the provision of a means of a pedestrian access between points F24, F23, F22 and F18 and between F18 and the station comprised within Work No. 5.
	102, 103, 104 and 107	For the provision of access for construction purposes and the future maintenance of Works Nos. 9, 10, 11, 13 and 14 and the provision of an alternative means of vehicular access to premises in consequence of the construction of those works.
	116	For the provision of access for construction purposes and future maintenance of Works Nos. 9, 10, 11 and 13.
	119	For the provision of a working site and access for construction purposes and future maintenance of Works Nos. 9 and 12.

SCHEDULE 3

Article 6

STREETS SUBJECT TO STREET WORKS

(1) Area	(2) Street subject to street works
In the London borough of Lewisham	Oldfield Grove Trundley's Terrace Footpath between points F1 and F2 Footpath between points F10 and F11, F13, F15, F17 and F18 Footpath between points F12 and F13 Footpath between points F14 and F15 Footpath between points F15 and F16 Surrey Canal Road Access road (Excelsior Industrial Estate) (Work No. 8A) Access road (rear of Millwall Football Club) (Work No. 8B) Access road (Orion Business Centre) (Work No. 8C) Hornshay Street Cold Blow Lane

SCHEDULE 4

Article 7

STREETS TO BE STOPPED UP

(1) Area	(2) Street to be stopped up	(3) Extent of stopping up	(4) New street to be substituted
London borough of Lewisham	Footpath between Trundley's Terrace and Oldfield Grove carried over the East London Line railway by means of a footbridge	Within the limit of deviation for Work No. 7	New footpath to be provided by means of a new footbridge (Work No. 7)
London borough of Lewisham	Footpath between Silwood Street and Rollins Street	Between points F2, F3, F4, F5, F6, F8, F9 and F10, between points F6 and F7 and between points F9 and F11	New footpath between points F2, F3, F4, F5, F19 and F20 and between points F21, F9 and F10

SCHEDULE 5

Article 8

STREETS TO BE TEMPORARILY STOPPED UP

(1) Area	(2) Street to be stopped up	(3) Extent of Temporary stopping up
In the London borough of Lewisham	Oldfield Grove	Within the limits
	Trundley's Terrace	Within the limits
	Footpath between Reculver Road and Silwood Street	Between points F1 and F2
	Footpath between Rollins Street and Hornshay Street	Between points F10, F11 and F18
		Between points F12 and F13
		Between points F14 and F15
		Between points F16 and F17
	Surrey Canal Road	Within the limits
	Access road (Excelsior Industrial Estate) (Work No. 8A)	Within the limits
	Access road (rear of Millwall Football Club) (Work No. 8B)	Within the limits
Access road (Orion Business Centre) (Work No. 8C)	Within the limits	
Hornshay Street	Within the limits	
Cold Blow Lane	Within the limits	

SCHEDULE 6

Article 9

ACCESS TO WORKS

(1) Area	(2) Description of Access
In the London borough of Lewisham	Point "A1" to Landmann Way Point "A2" to Surrey Canal Road Point "A3" to Cold Blow Lane

SCHEDULE 7

Article 21

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 1973 Act 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 determination 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 the land by reason of its severance from other lands of his, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

5. For section 8 of the 1965 Act (which relates to cases in which a vendor cannot be required to sell part only of a building or garden) there shall be substituted the following—

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

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

the London Underground (East London Line Extension) (No. 2) Order 2001 (“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 interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired is vested absolutely in the acquiring authority.

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

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

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

SCHEDULE 8

Articles 15 and 23

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

PART I

(1) Area	(2) Number of land shown on deposited plans	(3) Purposes for which temporary possession may be taken	(4) Authorised Work
London borough of Lewisham	46	Execution of safeguarding works pursuant to article 15 of this Order	Works Nos. 5 and 8
	83, 84, 85 and 86	Execution of safeguarding works pursuant to article 15 of this Order	Works Nos. 5, 8, and 8B

PART II

(1) Area	(2) Number of land shown on deposited plans	(3) Purposes for which temporary possession may be taken	(4) Authorised Work
London borough of Southwark	2	For the provision of access for construction purposes	Works Nos. 5 and 6
London borough of Lewisham	12, 13, 14 and 15	For the provision of a working site and access for construction purposes and provision of a temporary footpath between points F2 and A1	Works Nos. 1, 2, 3, 4, 5 and 7
	35	For the provision of a working site and access for construction purposes	Works Nos. 5, 8 and 8C

(1) Area	(2) Number of land shown on deposited plans	(3) Purposes for which temporary possession may be taken	(4) Authorised Work
	67, 68, 69 and 70	For the provision of a working site	Work No. 5
	80 and 81	For the provision of a working site and access for construction purposes	Works Nos. 5 and 6
	82	For the provision of access for the carrying out of safeguarding works under article 15 of this Order	Works Nos. 5, 8 and 8B
	110	For the provision of access for construction purposes	Works Nos. 9, 10, 11 and 14

SCHEDULE 9

Article 33

PROVISION 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 powers of statutory undertakers etc. to remove or re-site apparatus) shall apply in relation to any land acquired or appropriated by the Company 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 or 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 Company 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 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 Company 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 paragraph 2 below or Part III of the 1991 Act 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(a) applies, to run a public telecommunications system; or

(a) 1984 c. 12.

(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 7 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 7 of this Order any statutory utility whose apparatus is under, in, upon, over, along or across the street may and, if reasonably requested so to do by the Company, shall—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the 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 Company shall pay to any statutory utility an amount equal to the cost reasonably incurred by the 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 dimensions 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 Company, 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 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 7 years and 6 months earlier so as to confer on the utility a financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit as calculated in accordance with the Code of Practice entitled “Measures Necessary where Apparatus is Affected by Major Works (Diversionary Works)” and dated June 1992 and approved by the Secretary of State on 30 June 1992, as revised and re-issued from time to time.

(7) Sub-paragraphs (3) to (6) above shall not apply where the authorised works constitute major transport works for the purposes of Part III of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works shall be determined in accordance with section 85 of that Act (sharing of cost 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 Company and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this paragraph—

“apparatus” has the same meaning 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 or a public telecommunications operator as defined in paragraph 1(6) above.

Railway undertakings

3.—(1) Subject to the following provisions of this paragraph, the powers under article 6 of this Order to break up or open a street shall not be exercisable where the street, not being a highway maintainable at public expense (within the meaning of the Highways Act 1980)—

(a) is under the control or management of, or is maintainable by, railway or tramway undertakers; or

(b) forms part of a level crossing belonging to any such undertakers or to any other person;

except with the consent of the undertakers or, as the case may be, of the person to whom the level crossing belongs.

(2) Sub-paragraph (1) above shall not apply to the carrying out under this Order of emergency works, within the meaning of Part III of the 1991 Act.

(3) A consent given for the purposes of sub-paragraph (1) above may be made subject to such reasonable conditions as may be specified by the person giving it but shall not be unreasonably withheld.

SCHEDULE 10

Article 34

PROTECTIVE PROVISIONS

PART I

Protection for electricity, gas and water undertakers

1.—(1) For the protection of the several undertakers referred to in this Part of this Schedule the following provisions shall, unless otherwise agreed in writing between the Company and the undertakers concerned, have effect.

(2) In this Part of this Schedule—

“adequate alternative apparatus” means alternative apparatus adequate to enable the undertakers to fulfil their statutory functions in a manner not less efficient than previously;

“apparatus” means—

(a) in the case of electricity undertakers, electric lines or electrical plant (as defined in the Electricity Act 1989(a)) belonging to or maintained by such undertakers;

(b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a public gas transporter for the purposes of gas supply; and

(c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply;

(not being, except in paragraph 2 below, apparatus in respect of which the relations between the Company and the undertakers are regulated by the provisions of Part III of the 1991 Act) and includes any structure for the lodging within that structure of apparatus or any structure required for giving access to apparatus;

“functions” includes powers and duties;

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

“plan” includes sections and method statements; and

“undertakers” means any person authorised to carry on, in any area within which the Company is by this Order authorised to purchase land or execute works, an undertaking for the transportation or storage of gas, the supply of water or for the generation, transmission or supply of electricity; and, in relation to any apparatus, means the undertakers to whom it belongs or by whom it is maintained.

(3) The provisions of Schedule 9 to this Order shall not apply in relation to apparatus to which this Part of this Schedule applies.

2. Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 8 of this Order, the undertakers shall be at liberty at all times to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable them to maintain, renew or use any apparatus which at the time of the stopping up or diversion was in that highway.

3.—(1) The Company, in the case of the powers conferred by article 15 of this Order, shall, so far as is reasonably practicable, so exercise those powers as not to obstruct or render less convenient the access to any apparatus. If by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of the undertakers or any interruption in the supply of electricity, gas or water, as the case

(a) 1989 c. 29.

may be, by the undertakers is caused, the Company shall bear and pay the costs reasonably incurred by the undertakers in making good such damage or restoring the supply; and, subject to sub-paragraph (2) below, shall—

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

by reason of any such damage or interruption.

(2) Nothing in this paragraph shall impose any liability on the Company with respect to any damage or interruption to the extent that such damage or interruption may be attributable to the act, neglect or default of the undertakers or their contractors or workmen; and the undertakers shall give to the Company reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the Company.

4. Notwithstanding anything in this Order or shown on the deposited plans the Company shall not acquire any apparatus under the powers of this Order otherwise than by agreement.

5.—(1) If the Company, in the exercise of the powers of this Order, acquires any interest in any land in which any apparatus is placed, that apparatus shall not be removed under this Part of this Schedule and any right of the undertakers to maintain or renew that apparatus in that land shall not be extinguished until adequate alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the undertakers.

(2) If the Company, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, requires the removal of any apparatus placed in that land, it shall give to the undertakers written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed so as to provide adequate alternative apparatus in place of the apparatus to be removed, and in that case (or if in consequence of the exercise of any of the powers of this Order the undertakers reasonably require to remove any apparatus) the Company shall, subject to sub-paragraph (3) below, afford to the undertakers the necessary facilities and rights for the construction of the alternative apparatus in other land of the Company and thereafter for the maintenance and renewal of that apparatus.

(3) If the alternative apparatus or any part of it is to be constructed elsewhere than in other land of the Company, or the Company is unable to afford such facilities and rights as aforesaid in the land in which the alternative apparatus or part of it is to be constructed, the undertakers shall, on receipt of a written notice to that effect from the Company, forthwith use all reasonable endeavours to obtain the necessary facilities and rights in that last-mentioned land.

(4) Any alternative apparatus to be constructed in land of the Company under this Part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between the undertakers and the Company or in default of agreement settled by arbitration.

(5) The undertakers shall, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration as aforesaid and after the grant to the undertakers of any such facilities and rights as are referred to in sub-paragraph (2) or (3) above, proceed with all reasonable dispatch to construct and bring into operation the alternative apparatus and thereafter to remove any apparatus required by the Company to be removed under the provisions of this Part of this Schedule.

(6) Notwithstanding anything in sub-paragraph (5) above, if the Company gives notice in writing to the undertakers that it desires itself to execute any part of so much of the work necessary in connection with the construction of the alternative apparatus, or the removal of the apparatus required to be removed, as will take place in any land of the Company, that work, instead of being executed by the undertakers, may with the prior written consent of the undertakers (which shall not be unreasonably withheld and shall be subject to any such conditions as are reasonable and proper to protect the apparatus) be executed by the Company with all reasonable dispatch under the superintendence, if given, and to the reasonable satisfaction of the undertakers.

(7) Nothing in sub-paragraph (6) above shall authorise the Company to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

6.—(1) Where, in accordance with the provisions of this Part of this Schedule, the Company affords to the undertakers facilities and rights for the construction, maintenance or renewal in land of the Company of alternative apparatus in substitution for apparatus to be removed as aforesaid, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the Company and the undertakers or in default of agreement settled by arbitration in accordance with sub-paragraphs (2) and (3) below.

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in or along any railway of the Company, the arbitrator shall—

- (a) give effect to all reasonable requirements of the Company for ensuring the safe and efficient

operation of the railway and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the Company or the traffic on the railway; and

- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions (if any) applicable to the apparatus for which the alternative apparatus is to be substituted and have regard to the undertakers' ability to fulfil their service obligation.

(3) If the facilities and rights to be afforded by the Company in respect of any alternative apparatus and the terms and conditions subject to which those facilities and rights are to be granted are in the opinion of the arbitrator less favourable on the whole to the undertakers than the facilities and rights enjoyed by them in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator shall make such provision for the payment of compensation by the Company to the undertakers in respect thereof as appears to him to be reasonable having regard to all the circumstances of the particular case.

7.—(1) Not less than 28 days before commencing to execute any works that are referred to in paragraph 5(2) above and are near to or will or may affect any apparatus the removal of which has not been required by the Company under paragraph 5(2), the Company shall submit to the undertakers a plan, section and description of the works to be executed.

(2) Those works shall be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) below by the undertakers for the alteration or otherwise for the protection of the apparatus or for securing access thereto and the undertakers shall be entitled by their officer to watch and inspect the execution of those works.

(3) Any requirements made by the undertakers under paragraph (2) above shall be made within 21 days after the submission to them of a plan, section and description under sub paragraph (1) above.

(4) If the undertakers within 21 days after the submission to them of a plan, section and description shall, in consequence of the works proposed by the Company, reasonably require the removal of any apparatus and give written notice to the Company of that requirement, the foregoing provisions of this Part of this Schedule shall apply as if the removal of the apparatus had been required by the Company under paragraph 5(2) above.

(5) Nothing in this paragraph shall preclude the Company from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description thereof in place of the plan, section and description previously submitted, and thereupon the provisions of this paragraph shall apply to and in respect of the new plan, section and description.

(6) The Company shall not be required to comply with sub-paragraph (1) above in a case of emergency but in that case it shall give to the undertakers notice as soon as reasonably practicable and a plan, section and description of those works as soon as reasonably practicable thereafter and shall comply with sub-paragraph (2) above so far as reasonably practicable in the circumstances.

8. Where, by reason of this Order, any part of any highway in which any apparatus is situated ceases to be part of a highway the undertakers may exercise the same rights of access to such apparatus as they enjoyed immediately before the making of this Order, but nothing in this paragraph shall affect any right of the Company or of the undertakers to require removal of such apparatus under this Part of this Schedule or the power of the Company to execute works in accordance with paragraph 7 above.

9.—(1) Subject to the following provisions of this paragraph, the Company shall pay to the undertakers the costs, charges and expenses reasonably incurred by the undertakers in or in connection with the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 5(2) above (including the acquisition of any facilities or rights under paragraph 5(3) above), less the value of any apparatus removed under the provisions of this Part of this Schedule (that value being calculated after removal) and shall also make compensation to the undertakers—

- (a) for any damage caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal in accordance with the provisions of this Part of this Schedule); and
- (b) for any other expenses, loss, damages, penalty or costs incurred by the undertaker;

by reason of the execution, maintenance, user or failure of those works or otherwise by reason of the exercise by the Company of the powers of this Order.

(2) If in pursuance of the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions except where this has been solely due to using the nearest currently available type; 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 Company or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this paragraph would be payable to the undertakers by virtue of sub-paragraph (1) above shall be reduced by the amount of that excess.

(3) For the purposes of sub-paragraph (2) 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.

(4) An amount which apart from this sub-paragraph would be payable to the undertakers in respect of works by virtue of sub-paragraph (1) above (and having regard, where relevant, to sub-paragraph (2) above) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the undertakers any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit as calculated in accordance with the Code of Practice entitled “Measures Necessary where Apparatus is Affected by Major Works (Diversionary Works)” and dated June 1992 and approved by the Secretary of State on 30 June 1992.

(5) Sub-paragraphs (1) to (4) above shall not apply where the authorised works constitute major transport works for the purposes of Part III of the 1991 Act, but instead—

- (a) the allowable costs of the construction of works under this Part of this Schedule shall be determined in accordance with section 85 of that Act (sharing of cost 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 Company and the undertakers in such proportions as may be prescribed by any such regulations.

10.—(1) Where, by reason of the stopping up of any highway under the powers of this Order, any apparatus belonging to the undertakers and laid or placed in such highway or elsewhere is rendered derelict or unnecessary, the Company shall, subject to sub-paragraph (2) below, pay to the undertakers the then value of such apparatus (which shall thereupon become the property of the Company) and the reasonable costs of and incidental to the cutting off of such apparatus from any other apparatus, and of and incidental to the execution or doing of any works or things rendered necessary or expedient by reason of such apparatus being so rendered derelict or unnecessary.

(2) The Company shall not under the provisions of this paragraph be required to pay to the undertakers the value of any apparatus rendered derelict or unnecessary if, to the reasonable satisfaction of the undertakers, other apparatus has at the expense of the Company been provided and laid and made ready for use in substitution for the apparatus so rendered derelict or unnecessary.

11. Any difference arising between the Company and the undertakers under this Part of this Schedule shall be referred to and settled by arbitration under article 44 of this Order.

12. Nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the Company and the undertakers in respect of any apparatus laid or erected in land belonging to the Company on the coming into force of this Order.

PART II

Protection for sewerage undertakers

13.—(1) For the protection of sewerage undertakers the following provisions shall, unless otherwise agreed in writing between the Company and the sewerage undertaker concerned, have effect.

(2) In this Part of this Schedule—

“construction” includes placing or altering; and “constructed” shall be construed accordingly;

“sewer” means a public sewer within the meaning of the Water Industry Act 1991(a) and includes a disposal main within the meaning of that Act not being (except in paragraph 18(1) below) a sewer in respect of which relations between the Company and the undertaker are regulated by the provisions of Part III of the 1991 Act;

“specified works” means so much of the works as will or may be situated over or within 15 metres measured in any direction of, or (wherever situated) impose any load directly upon, any sewer; and

“the undertaker” means the sewerage undertaker for the area of the works or whose sewers are affected.

(a) 1991 c. 56.

14.—(1) Before commencing the construction or removal of any specified work, or in the case of any temporary work its removal, the Company shall submit to the undertaker plans of those works as described in sub-paragraph (2) below (in this Part of this Schedule referred to as “the said plans”) and shall not commence that work until the undertaker has signified in writing its approval of the said plans.

(2) Any approval of the undertaker required under this paragraph—

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

(3) The plans to be submitted to the undertaker shall be detailed plans, drawings, sections and specifications describing the position and manner in which, and the level at which, any specified work is proposed to be constructed and the position of the sewers of the undertaker within 15 metres of that work upon which the specified work will impose a load and shall include detailed drawings of every alteration which the Company may propose to any such sewers.

(4) For the purpose of the preparation of the said plans the undertaker shall permit the Company to have access to plans in its possession and to any of its sewers.

(5) The undertaker may require such modifications to be made to the said plans as may be reasonably necessary to secure the sewerage system of the undertaker against interference or risk of damage and to provide and secure proper and convenient means of access to any sewer.

15.—(1) The specified work shall be constructed, and in the case of any temporary work removed, in accordance with the plans approved, or deemed to have been approved, or settled by arbitration, as the same may be amended from time to time by agreement between the Company and the undertaker, and in the construction or removal of the specified work the Company shall comply with all reasonable requirements of the undertaker and shall provide new, altered or substituted sewers or works for the protection of any sewers of the undertaker in such manner as the undertaker may reasonably require by way of replacement provision for or for the proper protection of, and for preventing injury or impediment to, any such sewer by reason of any specified work.

(2) All works under sub-paragraph (1) above for the provision of new, altered or substituted sewers or the protection of any sewers of the undertaker shall, where so required by the undertaker, be constructed by the undertaker or under the supervision (if given) of an officer of the undertaker duly appointed for the purpose, and all costs, charges and expenses reasonably incurred by the undertaker in the construction of such works, or in the preparation or examination of plans or designs of such works or in such supervision, shall be paid to the undertaker by the Company.

(3) When works for the provision of any such new, altered or substituted sewer or any protective work forming part of any such new, altered or substituted sewer or any existing sewer of the undertaker, have been completed under this Part of this Schedule to the reasonable satisfaction of the undertaker, they shall be vested in and become maintainable by the undertaker.

16.—(1) Subject to the following provisions of this Part of this Schedule, the Company shall be liable to make good or, if the undertaker so decides, to repay to the undertaker any expense reasonably incurred by the undertaker in making good all injury or damage to any sewers drains or works vested in the undertaker (except in so far as such sewer, drain or work is intended for alteration or removal for the purposes of the specified work) caused by or resulting from the construction of any specified work or any investigation undertaken in relation to any specified work and the provision of any new, altered or substituted sewer or any protective work under this Part of this Schedule and shall pay to the undertaker any additional expense to which it may be put in the maintenance, management or renewal of any new, altered or substituted sewer which may be necessary in consequence of the construction of any specified work.

(2) The Company shall indemnify the undertaker against all actions, claims, demands, costs, expenses, damages or loss which may be made on or against the undertaker which the undertaker may incur or have to pay or which it may sustain in consequence of the construction of a specified work or of the failure or want of repair of a specified work or any subsidence caused by the construction of any specified work or in consequence of any act or omission of the Company, their contractors, agents, workmen or servants, whilst engaged upon the specified work and any new, altered or substituted sewer or any protective work.

(3) The undertaker shall give to the Company reasonable notice of any such claim or demand as aforesaid and no settlement or compromise shall be made without the agreement in writing of the Company.

(4) Nothing in sub-paragraph (1) or (2) above shall impose any liability on the Company in respect of any damage to the extent that it is attributable to the act, neglect or default of the undertaker, its officers, servants, or, if not the Company, its contractors or agents.

(5) If in pursuance of the provisions of this Part of this Schedule—

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

and the placing of a sewer of that type or capacity or of those dimensions or the placing of a sewer at that depth, as the case may be, is not agreed by the Company or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the sewer placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this paragraph would be payable to the undertaker by virtue of sub-paragraph (1) above shall be reduced by the amount of that excess.

(6) For the purposes of sub-paragraph (5) above an extension of a sewer to a length greater than the length of an existing sewer shall not be treated as a placing of a sewer of greater dimensions than those of the existing sewer.

(7) An amount which apart from this sub-paragraph would be payable to the undertaker in respect of works by virtue of sub-paragraph (1) above (and having regard, where relevant, to sub-paragraph (5) above) shall, if the works include the placing of a sewer provided in substitution for a sewer placed more than 7 years and 6 months earlier so as to confer on the undertaker any financial benefit by deferment of the time for renewal of the sewer in the ordinary course, be reduced by the amount which represents that benefit as calculated in accordance with the Code of Practice entitled “Measures Necessary where Apparatus is Affected by Major Works (Diversiary Works)” and dated June 1992 and approved by the Secretary of State on 30 June 1992.

(8) Sub-paragraph (1), (2) and (5) to (7) above shall not apply where the authorised works constitute major transport works for the purposes of Part III of the 1991 Act, but instead—

- (a) the allowable costs of the construction of works under this Part of this Schedule shall be determined in accordance with section 85 of that Act (sharing the 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 Company and the undertaker in such proportions as may be prescribed by any such regulations.

17.—(1) An officer of the undertaker duly appointed for the purpose may, at any reasonable time and, if required by the Company, under its supervision and control, enter upon and inspect any specified works or any works constructed under this Part of this Schedule.

(2) The approval by the undertaker of any plans, drawings, section or specifications or the supervision by it of any work under this Part of this Schedule shall not (if it was done without negligence on the part of the undertaker, its officers, servants, or, if not the Company, its contractors or agents) exonerate the Company from any liability or affect any claim for damages by the undertaker.

18.—(1) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 8 of this Order, the undertaker shall be at liberty at all times to construct and do all such works and things in, upon or under any such highway as may be reasonably necessary to enable it to maintain, renew, protect or use any sewer which at the time of the stopping up or diversion was in that highway.

(2) Where, in consequence of this Order, any part of any street, bridleway or footpath in which any sewer is situated ceases to be part of the street, bridleway or footpath, the undertaker may exercise the same rights of access to such sewer as it enjoyed immediately before the coming into force of this Order, but nothing in this paragraph shall affect any right of the Company or of the undertaker to require the alteration of such sewer under this Part of this Schedule.

19. The Company shall, so far as is reasonably practicable, so exercise the powers conferred by article 15 of this Order as not to obstruct or render less convenient the access to any sewer.

20. As soon as reasonably practicable after the completion of the construction of the specified works the Company shall deliver to the undertaker a plan and section showing the position and level of those works as constructed and all new, altered or substituted works provided under this Part of this Schedule.

21. Any difference arising between the Company and the undertaker under this Part of this Schedule shall be referred to and settled by arbitration under article 44 of this Order.

22. Nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the Company and the undertaker in respect of any sewer or other apparatus constructed, laid or erected in land belonging to the Company before the coming into force of this Order.

PROTECTION FOR RAILTRACK

1.—(1) For the protection of Railtrack the following provisions shall, unless otherwise agreed in writing between the Company and Railtrack PLC, have effect.

(2) In this Schedule—

“construction”, except in paragraph 19 below, includes reconstruction and for the purposes of paragraphs 14 and 17 below includes maintenance and repair of the specified works;

“designated lands” means the land delineated on the deposited plans and numbered 101, 105, 106 and 108 in the London borough of Lewisham;

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

“London Bridge to Brockley railway” has the same meaning as in Schedule 1 to this Order;

“plans” includes sections, drawings, particulars and schedules of construction;

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

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

“relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Railtrack’s railway network as a result of the construction of the specified works;

“the specified works” means so much of the authorised works as may be situated upon, across, under, over or within 15 metres of railway property or may in any way affect railway 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 Railways Act 1993(b).

2. The exercise by the Company against Railtrack of the powers of article 16 of this Order or the powers of section 11(3) of the 1965 Act shall be confined to lands in relation to which the Company’s powers of compulsory acquisition are not subject to the consent of Railtrack PLC under paragraph 4 below.

3.—(1) The Company shall not in the exercise of the powers conferred by article 8 of this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Railtrack PLC

(2) The consent of Railtrack PLC under sub-paragraph (1) above shall not be unreasonably withheld but may be given subject to reasonable conditions.

4.—(1) Subject to sub-paragraph (3) below, the Company shall not pursuant to the powers of this Order, without the consent of Railtrack PLC which shall not be unreasonably withheld, acquire or enter upon, take or use, whether temporarily or permanently or acquire any new rights over any railway property within the limits of deviation.

(2) Sub-paragraph (1) above shall not prevent the Company from acquiring the interest of any person other than Railtrack in the said land.

(3) Nothing in sub-paragraph (1) above shall prevent the Company pursuant to article 18 of this Order from acquiring compulsorily all or any part of the designated lands provided that such acquisition shall be subject to the exercise by Railtrack of such rights as are reasonably required in connection with the safe operation and maintenance of the London Bridge to Brockley railway which do not interfere with the construction and maintenance of the specified works.

5. The Company shall, before commencing the construction of the specified works, furnish to Railtrack PLC such proper and sufficient plans of the specified works (including particulars as to the working methods and the regulation of traffic in the vicinity of the specified works) as may reasonably be required by the engineer and shall not commence the specified works until those plans have been approved in writing by the engineer or settled by arbitration as provided in paragraph 6 below.

6. The engineer’s approval under paragraph 5 above shall not be unreasonably withheld and any question of whether it has been unreasonably withheld shall be settled by arbitration, and in any event if within 56 days after such plans have been furnished to Railtrack PLC the engineer has not notified his disapproval of the plans and the grounds of his disapproval, he shall be deemed to have approved the plans as submitted.

(a) 1985 c. 6.

(b) 1993 c. 43.

7. If within 56 days after such plans have been furnished to Railtrack PLC, Railtrack PLC gives notice to the Company that Railtrack PLC desires to construct any part of the specified works, which in the opinion of the engineer will or may affect the stability of railway property and the safe operation of the railways of Railtrack PLC or the services of train operators using the same, then, if the Company desires such part of the specified works to be constructed, Railtrack PLC shall construct it with all reasonable dispatch on behalf of, and to the reasonable satisfaction of, the Company in accordance with the plans approved or deemed to be approved or settled provided in paragraph 6 above.

8. Upon signifying his approval or disapproval 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 stability of railway property, the continuation of the safe and effective operation of the railways of Railtrack PLC or the services of train operators using the same (including any relocation of works, apparatus and equipment necessitated by the specified works) and the comfort and safety of the passengers who may be affected by the specified works, and such protective works as may be reasonably necessary for those purposes shall be constructed by Railtrack PLC with all reasonable dispatch, or, if Railtrack PLC so desires, such protective works shall be carried out by the Company at its own expense and the Company shall not commence the construction of the specified works until the engineer has notified the Company that the protective works have been completed.

9. The Company shall give to the engineer not less than 56 days' notice of its intention to commence the construction of any of the specified works and also except in an emergency (when it shall give such notice as may be reasonably practicable), of its intention to carry out any works for the maintenance of the specified works in so far as such works of maintenance affect or interfere with railway property.

10. The construction of the specified works and of any protective works carried out by the Company by virtue of the provisions of paragraph 8 above shall, when commenced, be carried out with all reasonable dispatch in accordance with the plans approved or deemed to be approved or settled as provided in paragraph 6 above and under the supervision (if given), and to the reasonable satisfaction, of the engineer, and in such manner as to cause as little damage as may be to railway property and as little interference as may be with the conduct of traffic on the railways of Railtrack PLC and the use by passengers of railway property and, if any damage to railway property or any such interference shall be caused by the carrying out of the specified works the Company shall, notwithstanding any such approval as aforesaid, make good such damage and shall pay to Railtrack PLC all reasonable expenses to which Railtrack may be put and compensation for any loss which it may sustain by reason of any such damage or interference.

11. Nothing in paragraph 10 shall impose any liability on the Company with respect to any damage, cost, expense or loss which is attributable to the act, neglect or default of Railtrack or any person in its employ, or of its contractors or agents and any liability of the Company under this paragraph shall be reduced proportionately to the extent to which any damage, cost, expense or loss is attributable to the act, neglect or default of Railtrack or of any person in its employ, or of its contractors or agents.

12. The Company 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 of the specified works.

13. During the construction of any works by Railtrack PLC under this Schedule Railtrack PLC shall at all times afford reasonable facilities to the Company and its agents for access to those works, and shall supply the Company with such information as Railtrack PLC may reasonably require with regard to such works or the method of construction thereof.

14. If any alterations or additions, either permanent or temporary, to railway property shall be reasonably necessary during the construction of the specified works, or during a period of 12 months after the completion of those works, in consequence of the construction of the specified works, such alterations and additions may be carried out by Railtrack PLC and, if Railtrack PLC gives to the Company reasonable notice of its intention to carry out such alterations or additions, the Company shall pay to Railtrack PLC the reasonable cost thereof including, in respect of permanent alterations and additions, a capitalised sum representing any 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.

15. If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions, a capitalised sum representing such saving shall be set off against any sum payable by the Company to Railtrack under this Schedule.

16. The Company shall repay to Railtrack PLC all reasonable costs, charges and expenses reasonably incurred by Railtrack—

- (a) in constructing any part of the specified works on behalf of the Company as provided by paragraph 7 above or in constructing any protective works under the provisions of paragraph 8 above, including, in respect of any permanent protective works, a capitalised sum representing the costs which may be expected to be reasonably incurred by Railtrack in maintaining and renewing such works;

- (b) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works;
- (c) in respect of any special traffic working resulting from any speed restrictions which may, in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of the specified works, or from the substitution or diversion of services which may be reasonably necessary for the same reason;
- (d) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of the specified works; and
- (e) in respect of the supervision by the engineer of the construction of the specified works.

17. The Company shall be responsible for, and make good to Railtrack PLC all reasonable costs, charges, damages, and expenses not otherwise provided for in this Schedule which may be occasioned to, or reasonably incurred by, Railtrack—

- (a) by reason of the construction of the specified works (as opposed to their existence) or the failure of the specified works; or
- (b) by reason of any act or omission of the Company or of any person in its employ, or of its contractors or others whilst engaged upon the construction of the specified works;

and the Company shall indemnify Railtrack from and against all claims and demands arising out of or in connection with the construction 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 any requirement of the engineer or under his supervision, shall not (if it was not attributable to the act, neglect or default of Railtrack or of any person in its employ, or of its contractors or agents) excuse the Company from any liability under the provisions of this Schedule.

18.—(1) Any liability of the Company under paragraph 17 above shall be reduced proportionately to the extent to which any costs, charges, damages and expenses are attributable to the act, neglect or default of Railtrack or of any person in its employ, or of its contractors or agents; and

(2) Railtrack shall give to the Company immediate notice of any claim or demand and no settlement or compromise shall be made without the prior consent of the Company.

19.—(1) The sums payable by the Company under paragraph 17 above shall include a sum equivalent to the relevant costs.

(2) Subject to the terms of any agreement between Railtrack PLC and the relevant train operators regarding the timing or method of payment of the relevant costs in respect of that train operator, Railtrack PLC shall promptly pay to each train operator the amount of any sums which Railtrack PLC receives under sub-paragraph (1) above which relates to the relevant costs of that train operator.

(3) The obligation under sub-paragraph (1) above to pay Railtrack PLC the relevant costs shall, in the event of default, be enforceable directly by the train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (2) above.

20. Nothing in paragraph 19 above shall entitle Railtrack or any train operator to any compensation in relation to works which have been transferred to and vested in Railtrack PLC by any agreement made under article 29 of this Order; but nothing in this 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 PLC.

21. In the assessment of compensation payable under this Schedule there shall not be taken into account any enhancement of that compensation attributable to any action taken or any agreement entered into by Railtrack if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining compensation or increased compensation and any reference in this paragraph to compensation shall be deemed to relate to any payment due to Railtrack under this Schedule.

22. Any difference arising between the Company and Railtrack under this Schedule shall be referred to and settled by arbitration under article 44 of this Order.

SCHEDULE 12

Article 37

PROTECTION FOR LONDON UNDERGROUND LIMITED

1.—(1) For the protection of the Company the following provisions shall, unless otherwise agreed in writing between the undertaker and the Company for the purposes of this Schedule, have effect.

(2) In this Schedule—

“the Company” means LUL, any subsidiary of LUL, a PPP Company, any subsidiary of a PPP Company and any PPP related third party;

“construction” includes reconstruction and for the purposes of paragraphs 13 and 16 below of this article includes maintenance and repair of the specified works;

“the engineer” means an engineer to be appointed by LUL;

“LUL” means London Underground Limited;

“PPP Company” has the same meaning as section 210(5) of the Greater London Authority Act 1999(a);

“PPP related third party” has the same meaning as section 215(2)(b) of the Greater London Authority Act 1999;

“plans” includes sections, drawings, particulars and schedules of construction;

“railway property” means any railway of LUL, and any works, apparatus and equipment of the Company connected therewith and includes any lands held or used by the Company for the purposes of such railway or works apparatus and equipment;

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

“the undertaker” means any person to whom the powers of LUL under the terms of this Order to construct, maintain, use and operate the authorised works or any part of those works are transferred in accordance with the terms of a transfer agreement pursuant to article 28 of this Order.

2. The exercise by the undertaker against the Company of the powers of article 16 of this Order or the powers of section 11(3) of the 1965 Act shall be confined to lands in relation to which the undertaker’s powers of compulsory acquisition are not subject to the consent of LUL under paragraph 4 below.

3.—(1) The undertaker shall not in the exercise of the powers conferred by article 8 of this Order prevent pedestrians or vehicular access to any railway property, unless preventing such access is with the consent of LUL.

(2) The consent of LUL under sub-paragraph (1) above shall not be unreasonably withheld but may be given subject to reasonable conditions.

4.—(1) The undertaker shall not pursuant to the powers of this Order, without the consent of LUL which shall not be unreasonably withheld, acquire or enter upon, take or use, whether temporarily or permanently or acquire any new rights over any railway property within the limits.

(2) Sub-paragraph (1) above shall not prevent the undertaker from acquiring the interest of any person other than the Company in the said land.

5. The undertaker shall, before commencing the construction of the specified works, furnish to LUL such proper and sufficient plans of the specified works (including particulars as to the working methods and the regulation of traffic in the vicinity of the specified works) as may reasonably be required by the engineer and shall not commence the specified works until those plans have been approved in writing by the engineer or settled by arbitration as provided in paragraph 6 below.

6. The engineer’s approval under paragraph 5 above shall not be unreasonably withheld and any question of whether it has been unreasonably withheld shall be settled by arbitration, and in any event if within 56 days after such plans have been furnished to LUL the engineer has not notified his disapproval of those plans and the grounds of his disapproval, he shall be deemed to have approved the plans as submitted.

7. If within 56 days after such plans have been furnished to LUL, LUL gives notice to the undertaker that LUL desires to construct any part of the specified works, which in the opinion of the engineer will or may affect the stability of railway property and the safe operation of the railways of LUL or the services of operators using the same, then, if the undertaker desires such part of the specified works to be constructed, LUL 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 provided in paragraph 6 above.

8. Upon signifying his approval or disapproval 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 stability of railway property, the continuation of safe and effective operation of the railways of the Company or the services of operators using those railways (including any relocation of works, apparatus and equipment necessitated by the specified works) and the comfort and safety of the passengers who may be affected by the specified works,

(a) 1999 c. 29.

and such protective works as may be reasonably necessary for those purposes shall be constructed by LUL with all reasonable dispatch, or, if LUL so desires, such protective works shall be carried out by the undertaker at its own expense and the undertaker shall not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed.

9. The undertaker shall give to the engineer not less than 56 days' notice of its intention to commence the construction of any of the specified works and also, except in an emergency (when they shall give such notice as may be reasonably practicable), of its intention to carry out any works for the repair or maintenance of the specified works in so far as such works of repair or maintenance affect or interfere with railway property.

10. The construction of the specified works and of any protective works carried out by the undertaker by virtue of the provisions of paragraph 8 above shall, when commenced, be carried out with all reasonable dispatch in accordance with the plans approved or deemed to be approved or settled as provided in paragraph 6 above and under the supervision (if given), and to the reasonable satisfaction, of the engineer, and in such manner as to cause as little damage as may be to railway property and as little interference as may be with the conduct of traffic on the railways of LUL and the use by passengers of railway property and, if any damage to railway property or any such interference shall be caused by the carrying out of the specified works the undertaker shall, notwithstanding any such approval make good such damage and shall pay to LUL all reasonable expenses to which it may be put and compensation for any loss which it may sustain by reason of any such damage or interference.

11. Nothing in paragraph 10 above shall impose any liability on the undertaker with respect to any damage, cost, expense or loss which is attributable to the act, neglect or default of the Company or any person in its employ, or of its contractors or agents and any liability of the undertaker under this paragraph shall be reduced proportionately to the extent to which any damage, costs, expense or loss is attributable to the act, neglect or default of the Company or of any person in its employ, or of its contractors or agents.

12. 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 of the specified works.

13. During the construction of any works by LUL under this Schedule LUL shall at all times afford reasonable facilities to the undertaker and its agents for access to those works, and shall supply the undertaker with such information as the undertaker may reasonably require with regard to such works or the method of their construction.

14. If any alterations or additions, either permanent or temporary, to railway property shall be reasonably necessary during the construction of the specified works, or during a period of 12 months after their completion, in consequence of the construction of the specified works, such alterations and additions may be carried out by LUL and, if LUL gives to the undertaker reasonable notice of its intention to carry out such alterations or additions, the undertaker shall pay to LUL the reasonable cost of the alterations or additions including, in respect of permanent alterations and additions, a capitalised sum representing any increase in the costs which may be expected to be reasonably incurred by the Company in maintaining, working and, when necessary, renewing any such alterations or additions.

15. If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions, a capitalised sum representing such saving shall be set off against any sum payable by the undertaker to the Company under this Schedule.

16. The undertaker shall repay to LUL all reasonable costs, charges and expense reasonably incurred by the Company—

- (a) in constructing any part of the specified works on behalf of the undertaker as provided by paragraph 7 above or in constructing any protective works under the provisions of paragraph 8 above, including in respect of any permanent protective works, a capitalised sum representing the costs which may be expected to be reasonably incurred by the Company in maintaining and renewing such works;
- (b) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works;
- (c) in respect of any special traffic working resulting from any speed restrictions which may, in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of the specified works, or from the substitution or diversion of services which may be reasonably necessary for the same reason;
- (d) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of the specified works; and
- (e) in respect of the supervision by the engineer of the construction of the specified works.

17. The undertaker shall be responsible for, and make good to LUL all reasonable costs, charges, damages and expenses not otherwise provided for in this Schedule which may be occasioned to, or reasonably incurred by, the Company—

(a) by reason of the construction of the specified works or the failure of the specified works; or

(b) by reason of any act or omission of the undertaker or of any person in its employ, or of its contractors or others whilst engaged upon the construction of the specified works;

and the undertaker shall indemnify the Company from and against all claims and demands arising out of or in connection with the construction of the specified works or any such failure, act or omission, and the fact that any act or thing may have been done in accordance with any requirement of the engineer or under his supervision, shall not (if it was not attributable to the act, neglect or default of the Company or of any person in its employ, or of its contractors or agents) excuse the undertaker from any liability under the provisions of this Schedule.

18.—(1) Any liability of the undertaker under paragraph 17 above shall be reduced proportionately to the extent to which any costs, charges, damages and expenses are attributable to the act, neglect or default of the Company or of any person in its employ, or of its contractors or agents.

(2) The Company shall give to the undertaker immediate notice of any claim or demand and no settlement or compromise shall be made without the prior consent of the undertaker.

19. Any difference arising between the undertaker and the Company under this Schedule shall be referred to and settled by arbitration under article 44 of this Order.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises the construction and maintenance of railway and other works—

- (a) in the London boroughs of Southwark and Lewisham in connection with the construction of an extension to the existing East London Line railway from a point south of Surrey Quays station to a point south of South Bermondsey station on the South London Line railway of Railtrack PLC including the construction of a new railway station spanning Surrey Canal Road; and
- (b) in the London borough of Lewisham in connection with the construction of an extension to the existing East London Line railway from a point south of Surrey Canal Road to a point south of New Cross Gate station on the London Bridge to Brockley railway of Railtrack PLC including the construction of a train servicing facility with sidings on land off Cold Blow Lane;

together with the construction and maintenance of such other works (of whatever nature) as may be necessary or expedient in connection therewith.

A copy of the deposited plans, the deposited sections and the book of reference referred to in this Order may be inspected at the offices of The Legal Adviser to London Underground Limited, London Underground Limited, 55 Broadway, London SW1H 0BD.

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