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STATUTORY INSTRUMENTS

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**2002 No. 1064**

**The Heathrow Express Railway Extension Order 2002**

**PART I**  
**PRELIMINARY**

**Citation and commencement**

1. This Order may be cited as the Heathrow Express Railway Extension Order 2002 and shall come into force on 30th April 2002.

**Interpretation**

2.—(1) In this Order—

“the 1965 Act” means the Compulsory Purchase Act 1965<sup>(1)</sup>;

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

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

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

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

“the deposited plans” means the plans described in rule 7(1)(a) and (3) of the Applications Rules prepared in connection with the application for this Order and certified by the Secretary of State as the deposited plans for the purposes of this Order and references to land shown on those plans are references to land so shown in pursuance of that rule;

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

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

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

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

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

“the tribunal” means the Lands Tribunal;

“the undertaker” means Heathrow Airport Limited and includes any subsidiary (within the meaning of section 736 of the Companies Act 1985<sup>(2)</sup>) of that company.

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything, in or on land or in the air-space over its surface, and references to the subsoil of any land include references to any cellar, basement, vault, arch or other construction forming part of any such land.

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

### **Incorporation of the Railways Clauses Acts**

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

section 24 (obstructing construction of railway);

section 58 (company to repair roads used by them), except for the words from “and if any question” to the end;

section 68 (accommodation works by company);

section 71 (additional accommodation works by owners), except for the words “or directed by such justices to be made by the company” and “or, in case of difference, as shall be authorised by two justices”;

sections 72 and 73 (supplementary provisions relating to accommodation works);

section 77 (presumption that minerals excepted from acquisition of land);

sections 78 to 85E and Schedules 1 to 3 (minerals under railways), as respectively substituted and inserted by section 15 of the Mines (Working Facilities and Support) Act 1923<sup>(4)</sup>;

sections 103 and 104 (refusal to quit carriage at destination);

section 105 (carriage of dangerous goods on railway);

section 145 (recovery of penalties); and

section 154 (transient offenders).

(2) The following provision of the Railways Clauses Act 1863<sup>(5)</sup> shall be incorporated in this Order—

section 12 (signals, watchmen etc.).

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

“the company” means the undertaker;

“goods” includes any thing conveyed on the railways authorised to be constructed by this Order;

“lease” includes an agreement for a lease;

“prescribed”, in relation to any such provision, means prescribed by this Order for the purposes of that provision;

“the railway” means any railway authorised to be constructed by this Order and, except where the context otherwise requires, any other authorised works;

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(2) 1985 c. 6.  
(3) 1845 c. 20.  
(4) 1923 c. 20.  
(5) 1863 c. 92.

“the special Act” means this Order;

“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 undertaker 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) The undertaker may, within the limits of deviation, carry out and maintain such of the following works as may be necessary or expedient for the purposes of, in connection with or in consequence of, the construction of the scheduled works, namely—

- (a) works to alter the position of apparatus, including mains, sewers, drains and cables;
- (b) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
- (c) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the scheduled works;
- (d) works for the benefit or protection of premises affected by the scheduled works; and
- (e) such other works of whatever nature, including emergency escape shafts and air ventilation shafts, as may be necessary or expedient.

(4) The undertaker may on or in any part of the lands numbered on the deposited plans 45, 46 and 47 make and maintain, in connection with the scheduled works, a railway station together with all such works as may be necessary or expedient for the purposes of, in connection with, or in consequence of, the construction of the station.

#### **Power to deviate**

5. In constructing or maintaining the scheduled works, the undertaker may—

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

#### *Supplemental powers*

#### **Discharge of water**

6.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised works and for that

purpose may lay down, take up and alter pipes and may, on any land shown on the deposited plans, make openings into, and connections with, the watercourse, sewer or drain.

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

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

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

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

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

(7) In this article—

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

### **Safeguarding works to buildings**

7.—(1) Subject to the following provisions of this article, the undertaker may at its own expense and from time to time carry out such safeguarding works to any building lying within 50 metres of any authorised works (other than works under this article) as the undertaker considers to be necessary or expedient.

(2) The powers conferred by this article shall not extend to any land which is situated east of the eastern limit of the limits of deviation or west of the western edge of the Western Perimeter Road at Heathrow Airport.

(3) 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.

(4) Subject to paragraph (2) above, for the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) above and any land belonging to it.

(5) For the purpose of carrying out safeguarding works under this article to a building the undertaker may (subject to paragraphs (2) above and (6) and (7) below)—

- (a) enter the building and any land belonging to it; and

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<sup>(6)</sup> 1991 c. 57.

(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).

(6) Before exercising—

- (a) a right under paragraph (1) above to carry out safeguarding works to a building;
- (b) a right under paragraph (4) above to enter a building;
- (c) a right under paragraph (5)(a) above to enter a building or land; or
- (d) a right under paragraph (5)(b) above to enter land,

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

(7) Where notice is served under paragraph (6)(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 34 below.

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

(9) Where—

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

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

(10) Without prejudice to article 32 below, nothing in this article shall relieve the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act.

(11) Any compensation payable under paragraph (8) or (9) above shall be determined, in case of dispute, under Part I of the Land Compensation Act 1961(7).

(12) In this article—

- (a) any reference to a building within 50 metres of a work includes—
  - (i) in the case of a work under the surface of the ground, a reference to any building within that distance of the point on the surface below which the work is situated; and
  - (ii) where a work has not commenced, a reference to a building within that distance of the proposed site of the work; and
- (b) “safeguarding works”, in relation to a building, means—
  - (i) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the construction, maintenance or operation of the authorised works; and
  - (ii) any works the purpose of which is to remedy any damage that has been caused to the building by the construction, maintenance or operation of the authorised works.

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

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

- (a) survey or investigate any land shown on the deposited plans and described in the book of reference 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 undertaker 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 undertaker—

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

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

## **PART III**

### **ACQUISITION AND POSSESSION OF LAND**

#### *Powers of acquisition*

### **Power to acquire land**

**9.** Subject to article 13 and article 14 below, the undertaker may acquire compulsorily so much of the land shown on the deposited plans within the limits of deviation and described in the book of reference as may be required for the purposes of the authorised works and may use any land so acquired for those purposes or for any other purposes connected with or ancillary to its railway undertaking.

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

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

- (a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981(8) applies; and
- (b) as if this Order were a compulsory purchase order under that Act.

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

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(8) 1981 c. 67.

- (a) section 4 (which provides a time limit for compulsory purchase of land) and paragraph 3(3) of Schedule 3 (which makes provision as to the giving of bonds) were omitted; and
- (b) in section 11(1) (which confers power to enter on and to take possession of land subject to a notice to treat on giving not less than 14 days' notice) for the reference to 14 days' notice there were substituted—
  - (i) in a case where the notice to treat relates only to the acquisition of subsoil or the acquisition of an easement or other right over the land, a reference to notice of one month; or
  - (ii) in any other case, a reference to notice of 3 months.

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

**11.**—(1) The undertaker may compulsorily acquire such easements or other rights over any land referred to in paragraph (1) of article 9 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 2 to this Order), where the undertaker acquires a right over land under paragraph (1) above the undertaker shall not be required to acquire a greater interest in it.

(3) Schedule 2 to this Order shall have effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right.

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

**12.**—(1) The undertaker may compulsorily acquire so much of the subsoil of the land referred to in paragraph (1) of article 9 above as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Subject to paragraph (3) below, where the undertaker acquires any part of the subsoil or land under paragraph (1) above the undertaker shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) above shall not prevent section 8 of the 1965 Act or article 18 below from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or factory.

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

**13.**—(1) This article applies to the lands numbered on the deposited plans 1 to 20, 22 to 25, 27 to 39 and 41.

(2) In the case of land to which this article applies, the undertaker's powers of compulsory acquisition under article 9 above shall be limited to the acquisition of, or rights in, so much of the subsoil of the land as may be required for the purposes of the authorised works.

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

(4) Paragraph (3) above shall not prevent section 8 of the 1965 Act or article 18 below from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or factory.

(5) References in this article to the subsoil of land are references to the subsoil lying more than 9 metres beneath the level of the surface of the land; and for this purpose “the level of the surface of the land” means—

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

#### *Temporary possession of land*

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

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

- (a) enter upon and take temporary possession of any land which it is authorised by this Order to acquire compulsorily;
- (b) remove any buildings and vegetation from that land; and
- (c) construct temporary works (including the provision of means of access) and buildings on the land.

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

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

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

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

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

(7) Without prejudice to article 32 below, nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5) above.

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

- (a) acquiring new rights over any part of that land under article 11 above, or
- (b) acquiring any part of the subsoil or rights in the subsoil of that land under article 12 above or in accordance with article 13 above.

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



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

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

- (a) enter upon and take temporary possession of any land within the limits of deviation which is within 20 metres of that work, if such possession is reasonably required for the purpose of, or in connection with, maintaining the work or any ancillary works connected with it;
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) above shall not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than house) if it is for the time being occupied.

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

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

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

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

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

(8) Without prejudice to article 32 below, nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6) above.

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

(10) In this article—

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

### *Supplementary*

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

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

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

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

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

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

**17.**—(1) In assessing the compensation payable to any person in respect of the acquisition from him under this Order of any land (including the subsoil or undersurface), the tribunal shall set off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity which will accrue to him by reason of the construction of the authorised works and the works authorised by the Heathrow Express Railway Act 1991(9).

(2) In assessing the compensation payable to any person in respect of the acquisition from him of any new rights over land (including the subsoil or undersurface) under article 11 above, the tribunal shall set-off against the value of the rights so acquired—

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

which will accrue to him by reason of the construction of the authorised works and the works authorised by the Heathrow Express Railway Act 1991.

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

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

**18.**—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 10 above) in any case where—

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

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

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

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

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

- (a) without material detriment to the remainder of the land subject to the counter-notice, or

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

the owner shall be required to sell the land subject to the notice to treat.

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

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

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

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

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

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

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

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

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

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

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

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

**19.—**(1) All private rights of way over land subject to compulsory acquisition under this Order shall be extinguished—

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

whichever is sooner.

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

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

(4) This article does not apply in relation to any right of way to which section 271 or 272 of the Town and Country Planning Act 1990(10) (extinguishment of rights of statutory undertakers etc.) applies.

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

**20.**—(1) The powers conferred by this Order to acquire land or rights over land compulsorily, and the power conferred by article 14 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 undertaker remaining in possession of land in accordance with article 14 above after the end of that period, if the land was entered and possession of it was taken before the end of that period.

## **PART IV**

### **MISCELLANEOUS AND GENERAL**

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

**21.** The undertaker may operate and use the scheduled works and other authorised works as a system, or part of a system, of transport for the carriage of passengers and goods.

#### **London Transport Users' Committee**

**22.**—(1) On the opening of the authorised works for passenger services it shall be the duty of the London Transport Users' Committee to consider and, where it appears to them to be desirable, make recommendations with respect to any matter affecting the services and facilities provided on the lines comprising those works or at the station—

- (a) which has been the subject of representations (other than representations appearing to the committee to be frivolous) made to the committee by or on behalf of users of those services or facilities, or
- (b) which has been referred to the committee by the Secretary of State or by the undertaker; or
- (c) which appears to the committee to be a matter to which consideration ought to be given;

and copies of the minutes, conclusions and recommendations of the committee shall be sent to the undertaker.

(2) Nothing in paragraph (1) above shall entitle the London Transport Users' Committee to consider the charges made for any service or facility, or to consider any question relating to the discontinuance or reduction of railway services.

(3) If the undertaker proposes the discontinuance of all railway passenger services on the lines comprising those works or at or from the station, it shall, not less than six months before carrying the proposal into effect, give to the Secretary of State notice of that proposal.

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(10) 1990 c. 8.

(4) Upon receipt of a notice served under paragraph (3) above, the Secretary of State shall consider, having consulted the London Transport Users' Committee and such other persons or bodies as he may think fit, what measures, if any he should in all circumstances take.

### **Byelaws relating to railway**

**23.**—(1) In this article and in article 24 below “the railway” means the railway comprised in the scheduled works and “railway premises” means premises of the undertaker used for or in connection with the operation of the railway.

(2) The undertaker may make byelaws regulating the use and working of, and travel on, the railway, the maintenance of order on that railway and railway premises, including the station authorised by article 4(4) above, the approaches to that station and any escalators, lifts, stairs and other communications constructed by it, and the conduct of all persons, including its officers and servants, while on those premises.

(3) Without prejudice to the generality of paragraph (2) above byelaws under this article may contain provisions—

- (a) with respect to tickets issued for entry on railway premises or travel on the railway or escalators, lifts, stairs and other communications, the payment of fares and charges and the evasion of payment of fares or charges;
- (b) with respect to interference with, or obstruction of, the railway or escalators, lifts, stairs and other communications;
- (c) with respect to the use of tobacco or other substances in railway vehicles and elsewhere and the prevention of nuisances;
- (d) for regulating the passage of bicycles and other vehicles on footways and other premises controlled by the undertaker and intended for the use of persons on foot;
- (e) for the safe custody and redelivery or disposal of property found in railway premises or vehicles of the undertaker or elsewhere upon the railway, and for fixing the charges which may be made in respect thereof.

(4) Any byelaws made under this article may provide that any person contravening them shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale for each offence.

(5) Without prejudice to the taking of proceedings under paragraph (4) above, if the contravention of any byelaw having effect under this section is attended with danger or annoyance to the public, or hindrance to the undertaker in the lawful conduct of the railway, it shall be lawful for the undertaker summarily to take action to obviate or remove the danger, annoyance or hindrance.

(6) The provisions of subsections (5) to (12) of section 67 of the Transport Act 1962<sup>(11)</sup> shall apply to any byelaws made by the undertaker under this article as if for references to the Board, or the board in question, there were substituted references to the undertaker.

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

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

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

(3) In this article—

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(11) 1962 c. 46.

- (a) “police authority” includes a police authority within the meaning of the Police Act 1996(12), and the Strategic Rail Authority;
- (b) “railway premises” means any building occupied by the undertaker for the purposes of its railway undertaking.

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

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

“functions” includes powers, duties and obligations;

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

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

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

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

(4) A transfer agreement may be entered into so as to transfer and vest such property and functions in any other person for such period as may be specified in that agreement or for so long as the agreement remains in force and where such an agreement is entered into references in this Order (except in the definition of “the participants” in paragraph 1(2) of Schedule 4 thereto) to the undertaker shall, to the extent that the agreement so provides, have effect as references to the transferee.

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

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

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

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

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

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

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

(12) If the undertaker fails, without reasonable excuse, to comply with the obligation imposed by paragraph (10) or (11) above it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(13) A transfer agreement may confer on the transferee the power of the undertaker to enter into a transfer agreement under this article in respect of any functions or property transferred to the transferee, and accordingly, the provisions of this article shall in their application to the exercise of such power by such transferee have effect as if any reference to the undertaker in those provisions (except paragraphs (8) and (9) above and paragraph (14) below) were a reference to the transferee.

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

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

**26.—**(1) Where pursuant to the Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994<sup>(13)</sup> approval has been obtained from the Health and Safety Executive with respect to any works, plant or equipment (including vehicles) forming part of the railways authorised by this Order, such works, plant and equipment shall not be used in a state or condition other than that in which they were at the time that the approval was given unless any change thereto does not materially impair the safe operation of the railways so authorised.

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

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

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

**27.** A person who—

- (a) enters a factory, workshop or workplace in pursuance of the provisions of article 7 or 8 above; and
- (b) discloses to any person any information obtained by him relating to any manufacturing process or trade secret;

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale unless the disclosure is made in the course of performing his duty in connection with the purposes for which he was authorised to enter the land.

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(13) S.I. 1994/157.

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

28. The provisions of Schedule 3 to this Order shall have effect.

### **Fuel pipelines and facilities**

29. The provisions of Schedule 4 to this Order shall have effect.

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

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

31.—(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(14) as it applies for the purposes of this article, the proper address of any person in relation to the service on him of a notice or document under paragraph (1) above is, if he has given an address for service, that address, and otherwise—

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

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

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

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

### **No double recovery**

32. 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.

### **Repeal**

33. Subsection (3) of section 43 of the Heathrow Express Railway Act 1991 is hereby repealed.



### **Arbitration**

**34.** 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

*Ellis Harvey*  
Head of the Transport and Works Act Processing  
Unit,  
Department for Transport, Local Government  
and the Regions

9th April 2002