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STATUTORY INSTRUMENTS

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**2005 No. 2222**

**The River Tyne (Tunnels) Order 2005**

**PART 1**

PRELIMINARY

**Citation and commencement**

1. This Order may be cited as the River Tyne (Tunnels) Order 2005 and shall come into force on 26th August 2005.

**Interpretation**

2.—(1) In this Order—

“the 1965 Act” means the Compulsory Purchase Act 1965(1);

“the 1976 Act” means the Tyne and Wear Act 1976(2);

“the 1984 Act” means the Road Traffic Regulation Act 1984(3);

“the 1991 Act” means the New Roads and Street Works Act 1991(4);

“appointed day” means the date on which this Order comes into force;

“authorised activities” means the construction, carrying out and maintenance of the authorised works, the operation, use and maintenance of the tunnel crossing and the exercise of any power, authority or discretion for the time being vested in or exercisable by the undertaker under this Order or otherwise;

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

“concessionaire” means any person with whom the undertaker enters into a concession agreement from time to time together with the successors and assigns of any such person;

“concession agreement” means a legally binding arrangement which may be comprised in one or more documents that makes provision for any or all of—

- (a) the design, construction, financing, refinancing, operation and maintenance of the new tunnel;
- (b) the financing, refinancing, operation and maintenance of the existing tunnels; and
- (c) any other matter in respect of the tunnel crossing;

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(1) 1965 c. 56.  
(2) 1976 c. xxxvi.  
(3) 1984 c. 27.  
(4) 1991 c. 22.

“concession toll date” means the date upon which an order made by the Secretary of State under section 13(2) of the 1976 Act as substituted by this Order revising the tolls or charges under article 42(1) in accordance with a determination of the undertaker under paragraph 4 of Schedule 14 to this Order comes into effect;

“the deposited plans” means the works plans and the land plans;

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

“the effective date” means the date upon which an order made by the Secretary of State under section 13(2) of the 1976 Act as substituted by this Order revising the tolls and charges chargeable under article 42(1) comes into effect;

“the existing foot tunnels” means Works Nos. 3, 3A and 4 as set out in Part I of Schedule 1 to the 1976 Act together with all approaches, tunnels, lifts, stairs, escalators, subways, passages, means of ingress or egress, shafts, stagings, buildings, apparatus, plant, machinery and subsidiary and incidental works;

“the existing tunnels” means the existing foot tunnels and the Tyne Tunnel;

“function” includes any power, authority or discretion for the time being vested in or exercisable by the undertaker under this Order, or otherwise, in relation to the tunnel crossing or any part of it or any of the authorised activities;

“highway” and “highway authority” have the same meaning as in the Highways Act 1980(5);

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

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

“the limits of land to be acquired or used” means the limits of land to be acquired or used shown on the works plans;

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

“new tunnel” means the new tunnel comprised in the authorised works together with—

- (a) all tunnels, lifts, stairs, escalators, subways, passages, means of ingress or egress, shafts, stagings, buildings, apparatus, plant, machinery and subsidiary and incidental works; and
- (b) all piles, fenders, booms, dolphins, embankments, abutments, wharves, walls, fences, drains, buildings and other works and conveniences, in the River Tyne or Howdon Basin and the banks, bed and foreshore thereof,

constructed or provided in connection therewith;

“operational land” shall, in respect of the tunnel crossing, have the meaning given to it in the Town and Country Planning Act 1990(6);

“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 Port Authority” means the Port of Tyne Authority;

“the scheduled works” means the works specified in Schedule 1 to this Order or any part of them, as the same may be varied pursuant to article 4;

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(5) 1980 c. 66.

(6) 1990 c. 8.

“street works”, in relation to a street, has the same meaning as in Part III of the 1991 Act;  
“street authority”, in relation to a street, has the same meaning as in Part III of the 1991 Act;  
“subsoil” means subsoil lying more than 1 metre 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, dock, canal, navigation, 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;

“tidal work” means so much of any work as is in, on, over or under tidal waters or tidal land below the level of mean high-water springs;

“the tribunal” means the Lands Tribunal;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“tunnel area” means so much of the land lying within the limits of land to be acquired or used as is situated within the River Tyne and Howdon Basin and their banks and beds;

“tunnel crossing” means the existing tunnels and the new tunnel together with—

- (a) the tunnel roads; and
- (b) any land not forming part of the tunnel roads which comprises operational land of the undertaker for the purposes of the tunnel crossing;

“tunnel roads” means the roads that run through the Tyne Tunnel and the new tunnel and Works Nos. 1B, 1C, 1D, 1E, 2C, 7A (part), 7B (part), 7K (part), 7L (part) and 7Q;

“Tyne Tunnel” means the existing road tunnel beneath the River Tyne and Howdon Basin between and in the Metropolitan Boroughs of North Tyneside and South Tyneside;

“the undertaker” means the Tyne and Wear Passenger Transport Authority;

“undertaking” includes the undertaking of the undertaker in connection with this Order, the authorised activities, the tunnel crossing, the functions and the property vested in the undertaker by article 3 of the Tyne Tunnel Order 1986(7); and

“works plans” means the plans certified by the Secretary of State as the works plans for the purposes of this Order.

(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) Except in Part 2 of Schedule 10 to this Order, all directions, distances, areas and dimensions stated in this Order shall be construed as if the words “or thereabouts” were inserted after each such direction, distance, area and dimension.

(4) The expression “includes” shall be construed without limitation.

## PART 2

### WORKS PROVISIONS

#### *Principal powers*

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

3.—(1) The undertaker may—

- (a) construct and maintain the scheduled works; and
- (b) break out and remove such structures that are contained within the limits of land to be acquired or used as may be necessary, expedient or convenient for the construction or maintenance of the scheduled works.

(2) Subject to article 4, 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 (5), the undertaker may 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 and maintenance of the scheduled works.

(4) The undertaker may remove any works carried out by it pursuant to this Order which have been constructed as temporary works or which it no longer requires.

(5) Paragraph (3) shall only authorise the carrying out or maintenance of works outside the limits of deviation if the works are carried out, constructed or maintained on land contained within the limits of land to be acquired or used.

#### **Power to deviate**

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

- (a) deviate laterally from the lines or situations shown on the works plans within the limits of deviation; and
- (b) deviate vertically from the levels shown for those works on the deposited sections—
  - (i) in respect of any structure not being beneath the River Tyne or Howdon Basin to any extent not exceeding 2 metres upwards;
  - (ii) to any such extent downwards as may be necessary, convenient or expedient.

#### *Streets*

#### **Power to execute street works**

5.—(1) The undertaker may, for the purpose of or in connection with the authorised works, enter upon so much of any of the streets specified in Schedule 2 to this Order as is within the limits of land to be acquired or used and may—

- (a) break up or open the street, or any sewer, drain, pipe or conduit 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 or remove it from the street; and
- (d) execute works required for or incidental to any works referred to in sub-paragraphs (a), (b) and (c).

- (2) This article is subject to paragraph 3 of Schedule 11 to this Order.
- (3) In this article “apparatus” has the same meaning as in Part III of the 1991 Act.

### **Power to alter layout of streets**

6.—(1) The undertaker may alter the layout of any street specified in columns (1) and (2) of Schedule 2 to this Order in the manner specified in relation to that street in column (2) of that Schedule.

(2) Without prejudice to the specific powers conferred by paragraph (1) but subject to paragraph (3), the undertaker may for the purpose of or in connection with the authorised works alter the layout of any street in or adjacent to which any authorised works are constructed or to be constructed and, without prejudice to the generality of the foregoing, the undertaker may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footway, cycle track or verge within the street,
- (b) alter the level of any such kerb, footway, cycle track or verge, and
- (c) reduce or increase the width of the carriageway of the street by forming a reserved area in the street as a stopping place for vehicles or by carrying out other works for that purpose.

(3) The powers in paragraph (2) shall not be exercised without the consent of the street authority, but such consent shall not be unreasonably withheld.

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

7.—(1) Subject to the provisions of this article, the undertaker may, for the purpose of or in connection with the carrying out or maintenance of the authorised works, stop up each of the streets specified in columns (1) and (2) of each Part of Schedule 3 to this order to the extent specified, by reference to the letters and numbers shown on the works plans, in column (3) of that Part.

(2) No street specified in columns (1) and (2) of Part 1 of Schedule 3 to this Order (being a street for which a substitute is to be provided) 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 in column (4) of that Part of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; 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 undertaker to the reasonable satisfaction of the street authority between the commencement and termination points of the street to be stopped up until the completion of the new street in accordance with sub-paragraph (a).

(3) Where a street has been stopped up under this article the undertaker may, without making any payment, appropriate and use for the purpose of or in connection with the authorised works so much of the site of the street as is bounded on both sides by land owned by the undertaker or occupied by the undertaker pursuant to the provisions of this Order.

(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 Land Compensation Act 1961(8).

- (5) This article is subject to paragraph 2 of Schedule 11 to this Order.

### Temporary stopping up of streets

8.—(1) The undertaker may, during and for the purpose of the carrying out or maintenance of the authorised works, temporarily stop up, alter or divert any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without prejudice to the generality of paragraph (1), the undertaker may use any street stopped up under the powers of this article as a temporary working site.

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

(4) Without prejudice to the generality of paragraph (1), the undertaker may exercise the powers of this article in relation to 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 works plans, in column (3) of that Schedule.

(5) Save in respect of any street which is a tunnel road, the undertaker shall not exercise the powers of this article—

- (a) in relation to any street specified as mentioned in paragraph (4) 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 but may be given subject to reasonable conditions.

(6) Where the street authority imposes reasonable conditions on its consent under this article the undertaker shall not exercise its powers under this article except in accordance with those conditions.

(7) Works executed under this Order in relation to a highway which consists of or includes a carriageway shall be treated for the purposes of Part III of the 1991 Act (street works) as major highway works if—

- (a) they are works of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of that Act (which defines what highway authority works are major highway works) and would have been major highway works had they been executed by the highway authority, or
- (b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64 of the Highways Act 1980(9) (dual carriageways and roundabouts).

(8) Section 56 (directions as to timing) and section 58 (restrictions following substantial road works) of the 1991 Act shall not apply in relation to any works executed under the powers of this Order.

(9) The provisions of the 1991 Act mentioned in paragraph (10) and any regulations made, or code of practice issued or approved, under those provisions shall apply (with the necessary modifications) in relation to the stopping up, alteration or diversion of a street by the undertaker under the powers conferred by this 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 undertaker.

- (10) The provisions of the 1991 Act referred to in paragraph (9) are—
- section 54 (advance notice of certain works),
  - section 55 (notice of starting date of works),

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(9) 1980 c. 66.

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 undertaker may, for the purpose of or in connection with the authorised works, form and lay out means of access or improve existing means of access in or near to the locations within the limits of land to be acquired or used shown on the deposited plans or listed in Schedule 5, within the boundaries of the street in question, as the undertaker reasonably requires for the purpose of or in connection with the authorised activities and as may be approved by the highway authority, but such approval shall not be unreasonably withheld.

### **Construction and maintenance of new or altered streets**

10.—(1) Subject to paragraph (5), any street to be constructed under this Order and not comprised within the tunnel crossing 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 undertaker 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), where a street not comprised within the tunnel crossing is altered or diverted under this Order, the altered or diverted part of the street shall when completed to the reasonable satisfaction of the street authority, unless otherwise agreed, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(3) Nothing in this article shall prejudice the operation of section 87 of the 1991 Act (prospectively maintainable highways) and the undertaker shall not by reason of any duty under this article to maintain a street be taken to be the street authority in relation to that street for the purposes of Part III of that Act.

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

(5) Nothing in this article shall operate to cause any street comprised in the tunnel crossing to be dedicated as highway unless the undertaker shall so elect.

(6) Notwithstanding anything contained in the Highways Act 1980 or the 1991 Act or in any other enactment, no person shall enter upon, break up or interfere with any of the tunnel roads or the carriageways, footways and verges of the same for the purpose of placing, laying down or doing anything in relation to any main pipe or wire or other apparatus or executing any work therein, thereon or thereunder, except with the consent of the undertaker and in accordance with such terms and conditions as the undertaker may determine.

### **Agreements with street authorities**

11.—(1) A street authority and the undertaker may enter into agreements with respect to—  
(a) the construction of any new street (including any structure carrying the street over or under a railway or any part of the tunnel crossing) 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 or any part of the tunnel crossing;
  - (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 articles 5 to 10.
- (2) Such an agreement may, without prejudice to the generality of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question; and
  - (b) contain such terms as to payments and otherwise as the parties consider appropriate.

### **Trunk roads**

**12.**—(1) On the date on which the roads comprised in Works Nos. 7U and 7V are open for public use those roads shall become trunk roads as if they had become so by virtue of an order under section 10(2) of the Highways Act 1980 specifying that date as the date on which they were to become trunk roads.

(2) Subject to paragraph (3), any power under the 1984 Act to make an order or to give a direction with respect to the roads comprised in Works Nos. 7U and 7V shall be exercisable by the Secretary of State as if he were the traffic authority before that road is open for public use in any case where it appears to the Secretary of State to be expedient that the order or (as the case may be) the direction should have effect immediately the road becomes open for public use.

(3) The procedure otherwise applicable under the 1984 Act in relation to the making of any such order or the giving of any such direction shall apply in any such case with such modifications as the Secretary of State may determine; and he shall publish notice of these modifications in such manner as appears to him to be appropriate for bringing them to the notice of persons likely to be affected by the provisions of any such order or (as the case may be) by any such direction.

### *Supplemental powers*

### **Discharge of water**

**13.**—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water for the purpose of or in connection with the authorised activities and for that purpose may lay down, take up and alter pipes and may, on any land shown within the limits of land to be acquired or used, make openings into, and connections with, a watercourse, public 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 in the case of the River Tyne and Howdon Basin with the consent of the Port Authority; 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 a 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) Notwithstanding the provisions of paragraph (1) or any consent given under paragraph (2) the undertaker shall not discharge water, whether directly or indirectly, into any public sewer or drain until it shall have implemented to the reasonable satisfaction of the authority to whom such public sewer or drain belongs such measures as are necessary in the reasonable opinion of that authority to avoid any adverse impact upon the undertaking of the authority.

(5) The undertaker shall take such steps as are reasonably practicable to secure that any water discharged into a watercourse, 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 and in the case of water, not being domestic sewage, discharged directly or indirectly into a public sewer or drain from the tunnel crossing, shall secure that it is free from any such substance or matter.

(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>(10)</sup>.

(7) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, the Port Authority 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**

**14.**—(1) Subject to the following provisions of this article, the undertaker may at its own expense and from time to time carry out safeguarding works to any building lying within the limits of land to be acquired or used.

(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 that part of the authorised works, at any time up to the period of 5 years beginning with the day on which that part of the authorised works is first opened for use.

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

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

- (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 right—

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

the undertaker 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 the right and, in a case falling within sub-paragraph (a) or (c), specifying the safeguarding works proposed to be carried out.

(6) Where notice is served under paragraph (5)(a), (c) or (d), 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 of whether it is necessary or expedient to

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<sup>(10)</sup> 1991 c. 57.

carry out the safeguarding works or to enter the building or land to be referred to arbitration under article 54.

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

(8) Where—

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

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

(9) Subject to article 53, nothing in this article shall relieve the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act.

(10) Any compensation payable under paragraph (7) or (8) shall be determined, in case of dispute, under Part I of the Land Compensation Act 1961<sup>(11)</sup>.

(11) In this article “safeguarding works”, in relation to a building, means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the authorised works;
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the authorised works; and
- (c) any works the purpose of which is to secure the safe operation and use of the tunnel crossing or to prevent or minimise the risk of such operation and use being disrupted.

### **Planning permission: supplementary matters**

**15.** Planning permission which is deemed by virtue of a direction under section 90(2A) of the Town and Country Planning Act 1990<sup>(12)</sup> to be granted in relation to work authorised by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of that Act.

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

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

- (a) survey or investigate any land shown within the limits of land to be acquired or used which may be affected by the authorised activities;
- (b) without prejudice to the generality of sub-paragraph (a), 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) without prejudice to the generality of sub-paragraph (a), carry out archaeological investigation on any such land;
- (d) place or leave on, in, under or over and remove from the land included in sub-paragraph (a) apparatus for use in connection with the exercise of any of the powers conferred by sub-paragraph (a) or (b); and
- (e) enter on the land referred to in sub-paragraph (a) for the purpose of exercising the powers conferred by sub-paragraph (a), (b), (c) or (d).

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<sup>(11)</sup> 1961 c. 33.

<sup>(12)</sup> 1990 c. 8.

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

(3) Any person entering land under this article on behalf of the 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 exercise any of the powers conferred by paragraph (1).

(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 undertaker shall pay 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(13).

### **Additional powers**

17.—(1) Subject to Part 3 of Schedule 10 to this Order but otherwise without prejudice to the other powers conferred by this Order or otherwise available to it, the undertaker may within the tunnel area for the purpose of or in connection with the carrying out and maintenance of the authorised works to be carried out within the tunnel area and notwithstanding any interference thereby with any public or private rights—

- (a) alter, relocate or replace any tidal work,
- (b) carry out excavations and clearance, dredging, deepening, dumping and pumping operations,
- (c) subject to article 48, sell, use, appropriate and dispose of any materials (including liquids) obtained by it in carrying out any such operations,
- (d) remove or relocate any mooring,
- (e) remove and relocate any vessel or structure sunk, stranded or abandoned or moored or left (whether lawfully or not),
- (f) temporarily moor or anchor vessels and structures,
- (g) temporarily alter, interfere with, occupy and use the banks, bed, foreshores, waters and walls of the River Tyne and Howdon Basin, and
- (h) construct, place, maintain and remove temporary works and structures,

in such manner and to such extent as may appear to it to be necessary or convenient.

(2) Except in the case of urgency, the undertaker will use reasonable endeavours to notify the owner of any mooring and the owner or master of any vessel or structure affected by the proposal to exercise the powers of paragraph (1)(d) or (e) before the exercise of that power.

### **Prohibitions within the tunnel area**

18.—(1) Notwithstanding anything in any other enactment or rule of law but subject to the provisions of this article, the Port Authority shall, at the reasonable request of the undertaker and at the undertaker's expense, by direction close the whole or any part of the tunnel area to navigation by all vessels or by any class of vessel.

(2) Subject to paragraph (3), a direction under paragraph (1) shall specify the duration of the closure, the part of the River Tyne and Howdon Basin affected and the vessels to which it applies.

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(13) 1961 c. 33.

(3) The duration of a closure under this article may be extended by the Port Authority until it is satisfied (acting reasonably) that any navigation channel to be opened following the closure has adequate depth and is free of obstruction.

(4) A person may not, without the written consent of the Port Authority, within any part of the tunnel area, during a period when it is closed to navigation under this article—

- (a) navigate any vessel or cause or permit a vessel to be moored if the vessel concerned is subject to the closure,
- (b) lay down or place any mooring or apparatus, including mains, sewers, drains and cables, or
- (c) undertake or cause or permit any other operation or activity,

unless he does so in compliance with any direction which the Port Authority has given either in an emergency or for naval or military operational requirements which the Port Authority is satisfied it is not reasonably practicable to fulfil at any other time.

(5) Any person who contravenes the requirements of paragraph (4) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) Except in an emergency, the Port Authority shall at the undertaker's expense publish notice of any direction given under paragraph (1) in at least one local newspaper circulating in the area in which the tunnel crossing is situated, not less than 14 days before the direction is to take effect.

(7) In making a direction pursuant to paragraph (1), the Port Authority shall ensure that no more of the tunnel area is closed to navigation at any time by all vessels, or by any class of vessel, than is at that time necessary in the circumstances.

(8) If complete closure of the tunnel area to all vessels or to any particular class of vessels is necessary at any time, the undertaker shall secure that any work of construction or maintenance of the new tunnel shall be carried out as soon as reasonably practicable to ensure that the minimum obstruction, delay or interference is caused to vessels which may be using or intending to use the tunnel area.

(9) Without prejudice to the provisions of article 22 neither the undertaker nor the Port Authority shall be liable for any costs, damages or expenses whatsoever incurred by any person as a result, directly or indirectly, of any closure of the tunnel area under this article.

(10) A direction given under this article may be varied or revoked by a subsequent direction given under this article.

### **Protection of tunnel, etc.**

**19.**—(1) A person may not without the consent of the undertaker use, for any purpose, any part of the authorised works.

(2) A person may not, without the consent in writing of the undertaker—

- (a) interfere with any part of the authorised works; or
- (b) remove, move or otherwise interfere with any such work or any machinery, apparatus, tools or other things in use or intended for use in connection with the authorised activities,

and to the extent that any activity within sub-paragraph (a) or (b) affects a tidal work the consent in writing of the Port Authority shall also be required, provided that this paragraph shall not require the undertaker to obtain the consent of the Port Authority except in accordance with Part 3 of Schedule 10 to this Order.

(3) Any consents required under this article may be given subject to conditions.

(4) A person who without reasonable excuse contravenes paragraph (1) or (2), or fails to comply with any conditions attached to a consent given by the undertaker or the Port Authority under

paragraph (3), shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **Restriction on mooring of vessels, etc.**

**20.**—(1) During the period of the construction of the new tunnel, a person who is not engaged in the construction of the authorised works shall not, without the consent in writing of the Port Authority and the undertaker (which consent may be given subject to conditions), moor any vessel or place any article over or on the bed of the river within the tunnel area; and after that period, a person shall not within the exclusion zone—

- (a) so moor without the consent of the Port Authority; or
- (b) so place without the consent of the Port Authority and the undertaker.

(2) In this article “exclusion zone” means so much of the River Tyne as is bounded by imaginary parallel straight lines drawn at a distance of 40 metres on either side of the centre line of the new tunnel.

## **PART 3**

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

#### *Powers of acquisition*

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

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

(2) This article is subject to articles 25(2) and 27(8).

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

**22.**—(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 and, in respect of section 10 of the 1965 Act, to the appropriation of any land owned or acquired by the undertaker (including land acquired by agreement)—

- (a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981(14) applies; and
- (b) as if this Order were a compulsory purchase order under that Act.

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

- (a) section 4 (which provides a time limit for compulsory purchase of land) and paragraph 3(3) of Schedule 3 (which makes provision as to the giving of bonds) were omitted; and
- (b) in section 11(1) (which confers power to enter on and to take possession of land subject to a notice to treat on giving not less than 14 days' notice) for the reference to 14 days' notice there were substituted—

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(14) 1981 c. 67.

- (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.

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

**23.**—(1) The undertaker may compulsorily acquire such easements or other rights over any land referred to in paragraph (1) of article 21 as may be required for any purpose for which that land may be acquired under that provision, by creating them as well as by acquiring easements or other rights already in existence.

(2) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 7 to this Order), where the undertaker acquires a right over land under paragraph (1) the undertaker shall not be required to acquire a greater interest in it.

(3) Schedule 7 to this Order shall have effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right.

### **Power to acquire subsoil only**

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

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

(3) Paragraph (2) shall not prevent section 8 of the 1965 Act or article 30 from applying where the undertaker acquires a cellar, vault, arch, basement or other construction forming part of a house, building or factory.

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

**25.**—(1) The article applies to the land specified in Schedule 6 to this Order.

(2) In the case of land to which this article applies, the undertaker's powers of compulsory acquisition under article 21 shall be limited to the acquisition of, or of rights in, so much of the subsoil 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 the 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.

### **Vesting declarations**

**26.**—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(15) shall apply as if this Order were a compulsory purchase order.

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

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

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(15) 1981 c. 66.

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

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession), and
- (b) published in *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, subsections (5) and (6) shall be omitted and at the end there shall be substituted—

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

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

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

- (a) in subsection (1), after “publication” there shall be inserted “in *The London Gazette* or in a local newspaper circulating in the area in which the land is situated”; and
- (b) 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 21(1).

#### *Temporary possession of land*

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

27.—(1) The undertaker may, for the purpose of or 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 Schedule 8 to this Order for the purposes specified in relation to that land in column (3) of that Schedule relating to the authorised works;
- (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 the 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 the land under this article after the end of the period of two years 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 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 any 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), or as to the amount of the compensation, shall be determined under Part I of the Land Compensation Act 1961(16).

(7) Without prejudice to article 53, 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).

(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) except that the undertaker shall not be precluded from—

- (a) acquiring new rights over any part of that land under article 23; or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 24.

(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**

**28.**—(1) At any time during the maintenance period relating to any of the authorised works, the undertaker may—

- (a) enter upon and take temporary possession of any land within the limits of land to be acquired or used if such possession is reasonably required for the purpose of or in connection with maintaining the authorised works;
- (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) shall not authorise the undertaker to take temporary possession of—

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

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

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary for the purpose for which the 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), or as to the amount of the compensation, shall be determined under Part I of the Land Compensation Act 1961.



(8) Without prejudice to article 53, 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).

(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 “the maintenance period”, in relation to any authorised work means the period of 5 years beginning with the date on which such authorised work is opened for use.

### *Compensation*

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

**29.**—(1) In assessing the compensation (if any) payable to any person on the compulsory 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 the 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 the intention of obtaining compensation or increased compensation.

(2) In paragraph (1) “relevant land” means the land acquired from the person concerned or any other land with which 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**

**30.**—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 22) 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 determines 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 determines 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 reference the tribunal determines 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 determines 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 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 part only 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.

### **Extinguishment and suspension of private rights of way**

**31.—**(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 owned by the undertaker which, being within the limits of land to be acquired or used, is required for the purposes of this Order shall be extinguished on the appropriation of the land for any of those purposes by the undertaker.

(3) 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.

(4) Any person who suffers loss by the interference with 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.

(5) 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<sup>(17)</sup> (extinguishment of rights of statutory undertakers etc.) or paragraph 2 of Schedule 11 to this Order applies.

### **Use of subsoil**

**32.**—(1) The undertaker may enter upon, take and use so much of the subsoil of any street within the limits of deviation or within the land the subject of article 21(1) as may be required for the purpose of the construction or maintenance of the authorised works without being required to acquire that subsoil or any right therein.

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

(3) Any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker 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 Land Compensation Act 1961<sup>(18)</sup>.

(4) Paragraph (2) shall not apply to—

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

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

### **Noise Insulation Regulations**

**33.** The Noise Insulation Regulations 1973<sup>(19)</sup> shall apply to the authorised works as if they were works that were carried out to construct or alter a highway and as if the undertaker were the appropriate highway authority in respect of such works to that highway and the undertaker shall be subject to such duties and have the benefit of such powers as if it were the appropriate highway authority under those regulations.

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

**34.**—(1) Subject to paragraph (2), the powers conferred by this Order to acquire land or rights over land compulsorily, and the power conferred by article 27 to enter upon and take temporary possession of land, shall cease at the end of the period of 5 years beginning on the appointed day.

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<sup>(17)</sup> 1990 c. 8.

<sup>(18)</sup> 1961 c. 33.

<sup>(19)</sup> S.I. 1973/1363.

(2) Paragraph (1) shall not prevent the undertaker remaining in possession of land in accordance with article 27 after the end of that period, if the land was entered and possession of it was taken before the end of that period.

## PART 4

### OPERATIONAL

#### **Power to operate, use and maintain the tunnel crossing**

**35.** The undertaker may operate, use and maintain the tunnel crossing.

#### **Closing the tunnel crossing**

**36.—(1)** The undertaker may whenever in its opinion it is necessary to do so whether in case of emergency or for the purpose of or in connection with the authorised activities close any of the tunnel roads or the existing foot tunnels whether wholly or partially.

(2) Where the undertaker proposes to close any of the tunnel roads it shall except in an emergency—

- (a) give not less than 7 days' notice by advertisement in at least one local newspaper circulating in the area; and
- (b) throughout the period of such closure display signs at convenient situations on the roads communicating with any public access road to the tunnel crossing giving warning of the closure.

#### **No mains or pipes**

**37.—(1)** Subject to paragraph (2), notwithstanding anything contained in the Highways Act 1980(20) or in any other enactment no person shall enter upon, break up or interfere with Works Nos. 3A, 4A, 5 or 6A or the carriageways and footways of the same for the purpose of laying down any main, pipe or wire or executing any work therein, thereon or thereunder, except with the consent of the undertaker and in accordance with such terms or conditions and subject to such charges as the undertaker may determine.

(2) The consent of the undertaker to the breaking up of and interference with any of the said works or the carriageways and footways of the same for the purposes of laying down water mains, water pipes or electric lines therein shall not be withheld unreasonably and any question which may arise as to whether such consent is so withheld or as to whether the terms and conditions subject to which any such consent is given are reasonable shall be resolved by an arbitrator under article 54.

#### **Obstruction of works and trespass on the tunnel crossing**

**38.—(1)** Any person who, without reasonable excuse, obstructs another person from constructing any of the authorised works under the powers conferred by this Order shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Any person who—

- (a) trespasses on the tunnel crossing, or

- (b) trespasses upon any land of the undertaker in dangerous proximity to the tunnel crossing or to any electrical or other apparatus used for or in connection with the operation of the tunnel crossing,

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

(3) No person shall be convicted of an offence under paragraph (2) of this article unless it is shown that a notice warning the public not to trespass upon the tunnel crossing was clearly exhibited and maintained near to the place where the offence is alleged to have been committed or the place at which the trespass upon the tunnel crossing or land is alleged to have begun.

(4) If the tolls payable by any person desirous of using the tunnel crossing be demanded of him before using the same, and such person shall, after demand from him of such tolls (such demand being made by any collector or other person appointed to receive the same), refuse or without reasonable excuse neglect to pay the same or any part thereof, the collector or other person so appointed may refuse to permit the person so in default to use the tunnel crossing and may, by himself, or with such assistance as he shall think necessary, stop and prevent the person so in default from using the same.

### **Traffic control**

**39.**—(1) The undertaker may for the purpose of or in connection with the authorised activities, place or maintain traffic signs of a type prescribed by regulations made under section 64(1)(a) of the 1984 Act or of a character authorised by the Secretary of State on or near any street leading to or from the tunnel crossing.

(2) The undertaker—

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

(3) Any power conferred by section 65 of the 1984 Act to give directions to a traffic authority or local traffic authority as to traffic signs shall include a power to give directions to the undertaker as to traffic signs under this article; and, accordingly, the powers conferred by paragraph (1) shall be exercisable subject to and in conformity with any directions given under that section.

(4) A traffic authority or other authority having power under or by virtue of the 1984 Act to place and maintain, or cause to be placed and maintained, traffic signs on or near any street leading to or from the tunnel crossing shall consult with the undertaker as to the placing of any traffic sign which would affect the operation of the tunnel crossing.

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

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

**40.**—(1) Agreements may be made between the undertaker and the chief officer of police of any police force and the police authority for making available to the undertaker for the purpose of or in connection with the authorised activities the services of members of the police force.

(2) Any such agreement may be made on such terms as to payment or otherwise, and subject to such conditions, as may be specified in the agreement.

(3) In this article “chief officer of police”, “police authority” and “police force” have the same meaning as in the Police Act 1996(21).

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(21) 1996 c. 16.

### **Power to make byelaws**

**41.**—(1) The undertaker may make and enforce byelaws regulating the use and operation of the tunnel crossing, the maintenance of order on and about the tunnel crossing or other facilities provided in connection with the tunnel crossing and the conduct of all persons including employees of the undertaker while on and about the tunnel crossing.

(2) Without prejudice to the generality of paragraph (1), byelaws under this article may make provision—

- (a) with respect to the payment of tolls and the evasion of payment of tolls;
- (b) with respect to interference with, or obstruction of, the operation of the tunnel crossing or other facilities provided in connection with the tunnel crossing;
- (c) with respect to the prevention of nuisances on the tunnel crossing;
- (d) for the recovery, safe custody and re-delivery or disposal of any property or vehicles left in the tunnel crossing and for fixing the charges made in respect of any such property or vehicles;
- (e) to prohibit vehicles from stopping or remaining at rest in prescribed places on the tunnel roads or elsewhere in or about the tunnel crossing, except in prescribed circumstances;
- (f) to require any person in charge of a vehicle which is at rest by reason of breakdown in a prescribed place on any of those roads to take prescribed steps for reporting that fact and the position and circumstances in which the vehicle is at rest;
- (g) to prohibit any person, other than a constable or an appointed person—
  - (i) from carrying out, or attempting to carry out, a repair, adjustment or refuelling of such a vehicle except with permission expressly given by a constable or an appointed person, and
  - (ii) from moving, or attempting to move, such a vehicle from the position in which it is at rest;
- (h) to prohibit persons from carrying out, or attempting to carry out, a repair, adjustment or refuelling of a vehicle except in prescribed circumstances;
- (i) to empower a constable or an appointed person to remove from its position to a prescribed area a vehicle which is for the time being at rest in a prescribed place on any of the roads to which the byelaws relate—
  - (i) in contravention of the byelaws,
  - (ii) by reason of breakdown,
  - (iii) without any person being in charge of it, or
  - (iv) with the person in charge of it not being present in or on it;
- (j) in the case of a vehicle which is so removed or which at the request of the person in charge of it is repaired, adjusted or refuelled (instead of being removed) by an appointed person, to require the prescribed person to pay a charge of an amount to be determined in accordance with such scales and other provisions as may be prescribed;
- (k) to prohibit a person from obstructing any action taken by a constable or an appointed person for the purpose of removing a vehicle in accordance with the byelaws;
- (l) to regulate traffic and the speed of traffic in the tunnel crossing;
- (m) to ensure the safety of vehicles passing through the tunnel crossing and to prohibit smoking or the use of exposed flames;
- (n) to restrict and regulate the passage of dangerous goods or traffic through the tunnel crossing;

- (o) for regulating the passage of bicycles and other vehicles on ways and other places intended for the use of persons on foot within the tunnel crossing; and
- (p) for prohibiting or restricting the placing or leaving of any vehicle without its driver on any part of the tunnel crossing.
- (a) (3) (a) Byelaws under this article may—
  - (i) designate places within the tunnel crossing at which tolls (other than tolls with respect to which a prepayment has been made) are to be paid;
  - (ii) make provision as to the persons by whom, and the manner in which, such tolls are to be paid;
  - (iii) make provision for securing that vehicles in respect of which tolls are payable do not use the tunnel crossing without payment of the tolls; and
  - (iv) make provision for preventing a vehicle which, having used the tunnel crossing, has arrived at the place at which a toll is payable in respect of it from proceeding beyond that place without a toll having been paid.
- (b) Byelaws made under this article shall provide for a notice specifying—
  - (i) the categories of vehicles in respect of which tolls are payable, and
  - (ii) the amount of the tolls in respect of each category to be displayed at each place designated in accordance with paragraph (3)(a)(i).
- (4) Byelaws under this article may provide for it to be an offence for a person to contravene, or to fail to comply with, a provision of the byelaws and for such a person to be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) Without prejudice to the terms of paragraph (4) where the undertaker considers it expedient to do so it may prosecute legal proceedings in respect of offences under this Order, or any other legislation which applies to the tunnel or would have applied to the tunnel had it been a highway, as if it were a highway.
- (6) Without prejudice to the provisions of paragraph (4) a person who without reasonable excuse—
  - (a) refuses or fails to pay a toll for which he is liable, or
  - (b) attempts to evade payment of such a toll,shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (7) Without prejudice to the taking of proceedings for an offence included in byelaws by virtue of paragraph (4), if the contravention of, or failure to comply with, any byelaw under this article is attended with danger or annoyance to the public or the undertaker or hindrance to the undertaker in the operation of the tunnel crossing, the undertaker may summarily take action to obviate or remove the danger, annoyance or hindrance.
- (8) Byelaws under this article shall not come into operation until they have been confirmed by the Secretary of State.
- (9) At least 28 days before applying for any byelaws to be confirmed under this article, the undertaker shall publish in such manner as may be approved by the Secretary of State a notice of its intention to apply for the byelaws to be confirmed and of the place at which and the time during which a copy of the byelaws will be open to public inspection; and any person affected by any of the byelaws may make representations on them to the Secretary of State within a period specified in the notice, being a period of not less than 28 days.

(10) For at least 24 days before an application is made under this article for byelaws to be confirmed, a copy of the byelaws shall be kept at the principal office of the undertaker and shall at all reasonable hours be open to public inspection without payment.

(11) The undertaker shall, at the request of any person, supply him with a copy of any such byelaws on payment of such reasonable sum as the undertaker may determine.

(12) The Secretary of State may confirm with or without modification, or may refuse to confirm, any of the byelaws submitted under this article for confirmation and, as regards any byelaws so confirmed, may fix a date on which the byelaws shall come into operation; and if no date is so fixed the byelaws shall come into operation after the expiry of 28 days after the date on which they were confirmed.

(13) The Secretary of State may charge the undertaker such fees in respect of any byelaws submitted for confirmation under this article as he may consider appropriate for the purpose of defraying any administrative expenses incurred by him in connection therewith.

(14) A copy of the byelaws when confirmed shall be printed and deposited at the principal office of the undertaker and shall at all reasonable hours be open to public inspection without payment, and the undertaker shall, at the request of any person, supply him with a copy of any such byelaws on payment of such reasonable sum as the undertaker shall determine.

(15) The production of a printed copy of byelaws confirmed under this article on which is endorsed a certificate purporting to be signed by a person duly authorised by the undertaker stating—

- (a) that the byelaws were made by the undertaker,
- (b) that the copy is a true copy of the byelaws,
- (c) that on a specified date the byelaws were confirmed by the Secretary of State, and
- (d) the date when the byelaws came into operation,

shall be *prima facie* evidence of the facts stated in the certificate.

(16) The provisions of the Road Traffic Offenders Act 1988(22) in relation to evidence shall apply to the prosecution of offences under this provision.

(17) Until such time as byelaws made pursuant to this article have been confirmed by the Secretary of State and have come into operation such byelaws as have previously applied to the Tyne Tunnel and the existing foot tunnels shall apply to and be enforceable in respect of the tunnel crossing.

(18) Byelaws made under this article may be varied or revoked by subsequent byelaws and byelaws made under this article may also vary or revoke any byelaws made under any other provision in respect of the tunnels comprised in the tunnel crossing at any time.

(19) In this article—

“appointed person” means a person appointed by the undertaker who may only act as such when wearing a uniform of a description approved by the undertaker;

“breakdown” in relation to a vehicle, includes mechanical defect, lack of fuel, oil or water required for the vehicle, and any other circumstances in which a person in charge of the vehicle could not immediately, safely and without damage to the vehicle or its accessories, drive it under its own power away from the tunnel crossing; and

“prescribed” means prescribed by byelaws under this Order.



## PART 5

### CONCESSION AND FINANCING ARRANGEMENTS

#### Power to charge tolls

**42.**—(1) Subject to paragraph (2), the undertaker may charge tolls or charges for the passage of vehicles through the tunnel crossing or for any other services or facilities provided in connection with the tunnel crossing.

(2) The undertaker shall not have power to charge tolls or charges in respect of the existing foot tunnels.

(3) The power to charge tolls or charges referred to in paragraph (1) of this article shall include the power to charge, set, demand, take, recover and waive tolls or charges and the power to suspend the charging of tolls or charges.

(4) The power to charge tolls or charges shall commence—

- (a) with the appointed day, as respects the Tyne Tunnel; and
- (b) with the day on which the new tunnel is first open for public use, as respects the Tyne Tunnel and the new tunnel together.

(5) Where tolls payable under or by virtue of this Order remain unpaid after they have become due for payment, the person to whom they are payable may recover from the person liable to pay them the amount of the tolls together with all other reasonable costs and expenses including administrative expenses, enforcement expenses and interest arising out of any such failure to pay.

(6) The undertaker may appoint any person to collect tolls as its agent.

(7) Schedule 14 shall have effect and the tolls chargeable in respect of any vehicle or class of vehicles shall be determined and revised in accordance with Part 1 of that Schedule and section 13 of the 1976 Act as amended by this Order.

(8) The undertaker may enter into agreements under which persons make payments in advance, on such terms as may be agreed, with respect to tolls for use of the existing tunnels or the new tunnel by those or other persons or by any vehicles.

(9) Agreements under paragraph (8) may relate to use on an agreed number of occasions or during an agreed period.

(10) Toll and charges may not be charged in respect of—

- (a) a vehicle being used in the discharge of the functions of a fire authority under the Fire and Rescue Services Act 2004<sup>(23)</sup> or which would otherwise be an exempt vehicle under paragraphs 4 and 5 of Schedule 2 to the Vehicle Excise and Registration Act 1994<sup>(24)</sup>;
- (b) a vehicle being used for police purposes;
- (c) a vehicle exempt from duty under the Vehicles Excise and Registration Act 1994 by virtue of section 7(4) of that Act (civil defence vehicles);
- (d) a vehicle exempt from duty under the Vehicles Excise and Registration Act 1994 under paragraphs 6 to 8 of Schedule 2 to that Act (ambulances);
- (e) a vehicle being driven by a disabled person, or being used for the carriage of one or more disabled persons, which displays a current disabled person's badge issued under—
  - (i) section 21 of the Chronically Sick and Disabled Persons Act 1970<sup>(25)</sup>, or

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<sup>(23)</sup> 2004 c. 21.

<sup>(24)</sup> 1994 c. 42, as amended by the Fire and Rescue Services Act 2004.

<sup>(25)</sup> 1970 c. 44.

- (ii) section 14 of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978<sup>(26)</sup>, or  
which has been issued with a token or permit to like effect by the undertaker;
- (f) a vehicle being used in connection with—
- (i) the collection of tolls; or
  - (ii) the maintenance, improvement or renewal of, or other dealing with, the tunnel crossing or or any structure, works or apparatus in, on, under or over any of the tunnel crossing;
- (g) a vehicle used for naval, military or air force purposes, while being driven by persons subject to the orders of a member of the armed forces of the Crown;
- (h) a vehicle which, having broken down in the tunnel crossing while travelling in one direction, is travelling in the opposite direction otherwise than under its own power; or
- (i) a public service vehicle as defined in the Public Passenger Vehicles Act 1981<sup>(27)</sup> which is being used in the provision of a local service as defined in section 2 of the Transport Act 1985<sup>(28)</sup>.
- (11) The tolls charged in accordance with this article to be demanded, taken and recovered may be applied by the undertaker—
- (a) in paying the costs and expenses incurred in designing, constructing, managing, operating and maintaining the tunnel crossing or any costs associated with financing any of the same;
  - (b) in providing such funds as are or are likely to be necessary to discharge the obligations of the undertaker pursuant to a concession agreement;
  - (c) in paying the interest on, and repaying the principal of, monies borrowed in respect of the existing tunnels;
  - (d) in making payment into any maintenance or reserve fund provided in respect of the tunnel crossing;
  - (e) in making grants to the passenger transport executive for the Metropolitan area of Tyne and Wear;
  - (f) in making payments to the undertaker's general fund for the purpose of directly or indirectly facilitating the achievement of policies relating to public transport in its local transport plan, or for other purposes; and
  - (g) in providing funds for, meeting expenses incurred in, or the cost of securing any necessary authority or consent for, and in constructing or in securing the construction, maintenance and operation of, the new tunnel.
- (12) The undertaker shall not apply any of the tolls for the purposes mentioned in sub-paragraphs (e) to (g) of paragraph (11)—
- (a) in a manner that would contravene Directive [1999/62/EC](#) of the European Parliament and of the Council of 17th June 1999<sup>(29)</sup> on the charging of heavy goods vehicles for the use of certain infrastructure; or
  - (b) unless it is satisfied that it has applied for the purposes of paragraphs (a) to (d) of that paragraph sufficient funds to ensure the safe, efficient and economic management, operation and maintenance of the tunnel crossing in accordance with all applicable statutory requirements.

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<sup>(26)</sup> 1978 c. 53.

<sup>(27)</sup> 1981 c. 14.

<sup>(28)</sup> 1985 c. 67.

<sup>(29)</sup> OJL 187, 20.7.1999, p 42.

### **Power to enter in to concession agreements and lease or transfer the undertaking etc.**

43.—(1) The undertaker may, on such terms as it sees fit, at any time and for any period, enter into one or more concession agreements and for that purpose may provide for the exercise of the powers of the undertaker in respect of the authorised activities or any part thereof, together with the rights and obligations of the undertaker in relation thereto.

(2) The exercise by the undertaker of its rights under paragraph (1) shall not exclude or limit the responsibility of the undertaker under this Order for the authorised activities.

(3) The undertaker may grant to any person or take from any person a lease, licence or any other interest in or right over any land, including land comprising or comprised in the tunnel crossing, if it appears to the undertaker expedient to do so for the purpose of or in connection with the exercise by that person of any or all of the authorised activities.

(4) The undertaker may, with the consent of the Secretary of State, transfer the whole or any part of its undertaking.

### **Application of landlord and tenant law**

44.—(1) This article applies to any agreement for leasing to any person the whole or any part of the tunnel crossing or the right to operate the same, and any agreement entered into by the undertaker with any person for the carrying out of the authorised activities or any part of thereof, so far as any such agreement relates to the terms on which any land is subject to a lease granted by or under that agreement.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants shall prejudice the operation of any agreement to which this article applies.

(3) Accordingly no such enactment or rule of law shall apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

## **PART 6**

### **MISCELLANEOUS AND GENERAL**

#### **Saving for Trinity House and protection of navigation**

45.—(1) Nothing in this Order shall prejudice or derogate from any of the powers, rights or privileges, or the jurisdiction or authority of Trinity House.

(2) Schedule 9 shall have effect.

#### **Protection of certain persons**

46. For the protection of the persons specified in the several Parts of that Schedule, Schedule 10 shall have effect.

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

47. Schedule 11 shall have effect.

### **Minerals**

48. Nothing in this Order shall affect the right of any person entitled to any mine or minerals of any description whatsoever under a street or other land in, on, or adjacent to which the authorised works are constructed to work the mine or get the minerals but this shall not affect any liability (whether civil or criminal) of the person so entitled in respect of any damage to the tunnel crossing or the other authorised works resulting from the exercise of any such rights.

### **Application of local legislation**

49. Schedule 12 shall have effect.

### **Repeal of enactments**

50. Schedule 13 shall have effect.

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

51. 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, respectively, true copies of 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**

52.—(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(30) 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) 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.

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(30) 1978 c. 30.

**No double recovery**

53. 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**

54. Unless otherwise agreed, any dispute or difference under or arising out of any provision of this Order (other than in relation to any matter otherwise provided for in Schedules 9 or 10 or a difference which falls to be determined by the tribunal) shall be referred to and determined 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

*Ellis Harvey*  
Head of the Transport and Works Act Orders  
Unit,  
Department for Transport

5th August 2005