
STATUTORY INSTRUMENTS

2007 No. 2297

**The Docklands Light Railway (Capacity Enhancement
and 2012 Games Preparation) Order 2007**

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Docklands Light Railway (Capacity Enhancement and 2012 Games Preparation) Order 2007 and shall come into force on 23rd August 2007.

Interpretation

2.—(1) In this Order—

“the 1845 Act” means the Railways Clauses Consolidation Act 1845**(1)**;

“the 1961 Act” means the Land Compensation Act 1961**(2)**;

“the 1965 Act” means the Compulsory Purchase Act 1965**(3)**;

“the 1980 Act” means the Highways Act 1980**(4)**;

“the 1981 Act” means the Acquisition of Land Act 1981**(5)**;

“the 1984 Act” means the Road Traffic Regulation Act 1984**(6)**;

“the 1990 Act” means the Town and Country Planning Act 1990**(7)**;

“the 1991 Act” means the New Roads and Street Works Act 1991**(8)**;

“the 1993 Act” means the Railways Act 1993**(9)**;

“the 1994 Act” means the London Docklands Development Corporation Act 1994**(10)**;

“the 2003 Act” means the Communications Act 2003**(11)**;

“the Applications Rules” means the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2000;

“authorised works” means the scheduled works and any other works authorised by this Order or any part of them;

(1) 1845 c. 20.

(2) 1961 c. 33.

(3) 1965 c. 56.

(4) 1980 c. 66.

(5) 1981 c. 67.

(6) 1984 c. 27.

(7) 1990 c. 8.

(8) 1991 c. 22.

(9) 1993 c. 43.

(10) 1994 c. xiii.

(11) 2003 c. 21.

“the Bank to Canary Wharf Railway” means that part of the Docklands Light Railway that operates between Bank Station in the City of London and Canary Wharf Station in the London Borough of Tower Hamlets;

“the Board” means the British Waterways Board;

“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;

“carriageway” has the same meaning as in the 1980 Act;

“the deposited plans” means the plans prepared in pursuance of rule 12(1)(a) and (5) of the Applications Rules and certified by the Secretary of State as the deposited plans for the purposes of this Order and references to land shown on those plans are references to land so shown in pursuance of rule 12(5);

“the deposited sections” means the sections prepared in pursuance of rule 12(3) of the Applications Rules and certified by the Secretary of State as the deposited sections for the purposes of this Order;

“DLRL” means Docklands Light Railway Limited, a company limited by shares and registered in England and Wales under number 2052677;

“the Dock” means the West India North Branch Dock shown on the maps referred to in section 3 of the 1994 Act;

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

“the limits of deviation” means the limits of lateral deviation for the scheduled works mentioned in article 5(1) (power to construct and maintain works);

“the limits of land to be acquired or used” means the limits so shown and described on the deposited plans;

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

“mooring” means any buoy, pile, pontoon chain or other apparatus used for the mooring of vessels;

“Network Rail” means Network Rail Infrastructure Limited;

“the Order limits” means the limits of deviation and the limits of land to be acquired or used shown on the deposited plans;

“owner”, in relation to land, has the same meaning as in the 1981 Act;

“parking place” has the same meaning as in section 32 of the 1984 Act;

“pile strengthening” means works to construct, alter or otherwise strengthen piers and columns to support DLRL’s railway viaduct;

“the Poplar to Canary Wharf Railway” means that part of the Docklands Light Railway that operates between Poplar Station and Canary Wharf Station in the London Borough of Tower Hamlets;

“public communications provider” has the same meaning as in section 151(1) of the 2003 Act;

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

“the scheduled works” means the works specified in Schedule 1 or any part of them;

“station works” means works to provide platform extensions, stairs, passenger lifts, canopies, electricity substations, the carrying out of viaduct strengthening and the provision of working sites and access;

“street” includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“the tribunal” means the Lands Tribunal; and

“viaduct strengthening” means pile strengthening, works to attach steel plates to DLRL’s railway viaduct and such other works to strengthen DLRL’s railway viaduct as DLRL thinks fit.

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

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

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

Application of the 1991 Act

3.—(1) Works executed under this Order in relation to a highway which consists of or includes a carriageway shall be treated for the purposes of Part 3 of the 1991 Act (street works) as major transport works if—

(a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of that Act (which defines what highway authority works are major highway works); or

(b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64 of the 1980 Act (dual carriageways and roundabouts).

(2) The following provisions of the 1991 Act shall not apply in relation to any works executed under the powers conferred by this Order—

section 56 (directions as to timing);

section 56A (power to give directions as to placing of apparatus);

section 58 (restrictions following substantial road works);

section 73A (power to require undertaker to re-surface street);

section 73B (power to specify timing, etc., of re-surfacing);

section 73C (materials, workmanship and standard of re-surfacing);

section 78A (contributions to costs of re-surfacing by undertaker); and

Schedule 3A (restriction on works following substantial street works).

(3) If any provision mentioned in paragraph (2) is not yet in force on the date this Order comes into force, the exclusion of the operation of any such provision shall not take effect until the date appointed by the Secretary of State for the coming into effect of the provision in question.

(4) The provisions of the 1991 Act mentioned in paragraph (5) which, together with other provisions of that Act, apply in relation to the execution of street works 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 of a temporary nature by DLRL under the powers conferred by this Order whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act referred to in paragraph (4) are—

section 54 (advance notice of certain works);

section 55 (notice of starting date of works);

section 57 (notice of emergency works);

section 59 (general duty of street authority to co-ordinate works);
section 60 (general duty of undertakers to co-operate);
section 68 (facilities to be afforded to street authority);
section 69 (works likely to affect other apparatus in the street);
section 75 (inspection fees);
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.

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

Incorporation of the Railways Clauses Consolidation Act 1845

- 4.—(1) The following provisions of the 1845 Act shall be incorporated in this Order—
- 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);
 - sections 103 and 104 (refusal to quit carriage at destination);
 - section 105 (carriage of dangerous goods on railway);
 - section 145 (recovery of penalties); and
 - section 154 (transient offenders).
- (2) In those provisions as incorporated in this Order—
- “the company” means DLRL;
 - “goods” includes anything 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; and
 - “the special Act” means this Order.

PART 2

WORKS PROVISIONS

Principal powers

Power to construct and maintain works

- 5.—(1) DLRL may construct and maintain the scheduled works.

(2) Subject to article 6 (power to deviate), 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) DLRL may carry out and maintain on the land specified in column (1) and (2) of Schedule 2, the works specified in relation to that land in column (3) of that Schedule together with all necessary works and facilities in connection therewith.

(4) Subject to paragraph (6), and without prejudice to any other powers available to it under any other enactment, DLRL may from time to time carry out and maintain such of the following works as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the authorised works, namely—

- (a) works to alter the position of apparatus, including mains, sewers, drains, pipes, cables and street furniture;
- (b) works to erect and construct such engines, passenger lifts, machinery, apparatus and other works and facilities as DLRL thinks fit;
- (c) works to provide and extend all such approaches, bridges, subways, interchanges, roundabouts, turning places, passages, areas of access and staging as DLRL thinks fit;
- (d) junctions and communications (including the provision of steps or ramps for the use of persons on foot) with any highway or access way interfered with by, or contiguous with, any of those works, and widen or alter any highway or access way for the purposes of connecting it with any of those works or another highway, or of crossing under or over the highway or access way;
- (e) works to carry out viaduct strengthening and pile strengthening;
- (f) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
- (g) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised works;
- (h) works for the benefit or protection of land or premises affected by the authorised works; and
- (i) works to discontinue the above mentioned works or any of them and substitute others in their place.

(5) Subject to paragraph (6), DLRL may from time to time carry out and maintain such other works (of whatever nature) as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the authorised works.

(6) The works specified in paragraphs (4) and (5) may only be carried out—

- (a) within the limits of deviation for the scheduled works shown on the deposited plans;
- (b) on land specified in columns (1) and (2) of Schedule 2 in connection with authorised works specified in relation to that land in column (3) of that Schedule; and
- (c) on land specified in columns (1) and (2) of Schedule 7 in connection with the authorised works specified in relation to that land in column (4) of that Schedule.

(7) In constructing the scheduled works, DLRL may do either or both of the following—

- (a) use such parts of the original viaducts as it may require for purposes of the scheduled works or for any purposes connected with or ancillary to its railway undertaking;
- (b) take down and remove such parts of the original viaducts as DLRL does not require.

(8) The following enactments shall not apply to anything done under or in pursuance of this Order—

- (a) section 109 of the Water Resources Act 1991⁽¹²⁾;
 - (b) section 23 of the Land Drainage Act 1991⁽¹³⁾;
 - (c) section 13 of the 1994 Act; and
 - (d) any byelaws made under the above Acts.
- (9) In this article—
- (a) “the original viaducts” means—
 - (i) that part of the existing railway viaduct carrying the Bank to Canary Wharf Railway within the Order limits; and
 - (ii) that part of the existing railway viaduct carrying the Poplar to Canary Wharf Railway within the Order limits; and
 - (b) “watercourse” has the same meaning as in the Land Drainage Act 1991.

Power to deviate

- 6.—(1) In constructing or maintaining the scheduled works, DLRL may—
- (a) deviate laterally from the lines or situations shown on the deposited plans within the limits of deviation relating to that work shown on those plans; and
 - (b) deviate vertically from the levels shown on the deposited sections to any extent not exceeding 0.5 metres upwards or downwards.
- (2) Without prejudice to the generality of paragraph (1), in constructing or maintaining the scheduled works DLRL may, to the extent that it thinks fit—
- (a) deviate from their points of commencement and termination shown on the deposited plans; and
 - (b) in relation to any intended viaduct, gantry or other structure or apparatus above ground level, deviate from the design shown on the deposited sections as it thinks fit, including by varying the number of any supporting piers, columns or other structures, the distances between them and the height or clearance above the level of the ground.

Streets

Power to keep apparatus in streets

- 7.—(1) DLRL may, for the purposes of or in connection with the construction, maintenance and use of the authorised works, place and maintain in any street within the Order limits and in any street having a junction with such a street any work, equipment or apparatus including, without prejudice to the generality of the foregoing, foundations, road islands, substations, electric lines and any electrical or other apparatus.
- (2) In this article—
- (a) “apparatus” has the same meaning as in Part 3 of the 1991 Act;
 - (b) “electric line” has the meaning given by section 64(1) of the Electricity Act 1989⁽¹⁴⁾; and
 - (c) the reference to any work, equipment, apparatus or other thing in a street includes a reference to any work, equipment, apparatus or other thing under, over, along or upon the street.

⁽¹²⁾ 1991 c. 57.

⁽¹³⁾ 1991 c. 59.

⁽¹⁴⁾ 1989 c. 29.

Power to execute street works

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

- (a) break up or open the street, or any sewer, drain or tunnel under it, or tunnel or bore under the street;
 - (b) place apparatus in the street;
 - (c) maintain apparatus in the street or change its position; and
 - (d) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b) and (c).
- (2) This article is subject to paragraph 3 of Schedule 8.
- (3) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

Stopping up of streets and extinguishment of rights

9.—(1) Subject to the provisions of this article, DLRL may, in connection with the construction of the authorised works, stop up the designated footpath and the designated highway.

(2) The designated footpath shall not be wholly or partly stopped up under this article unless either—

- (a) the replacement footpath has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary replacement footpath is first provided and thereafter maintained by DLRL between points T1 and T2 at Royal Albert Station to the reasonable satisfaction of the street authority until completion and opening of the replacement footpath in accordance with sub-paragraph (a).

(3) The designated highway shall not be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the relevant land; and for this purpose “relevant land” means any land which abuts on either side of the designated highway.

(4) The condition referred to in paragraph (3) is that—

- (a) DLRL is in possession of the relevant land; or
- (b) there is no right of access to the relevant land from the street concerned; or
- (c) there is reasonably convenient access to the relevant land otherwise than from the street concerned; or
- (d) the owners and occupiers of the relevant land have agreed to the stopping up.

(5) Where the designated footpath and the designated highway have been stopped up under this article—

- (a) all rights of way over or along the designated footpath and in the designated highway so stopped up shall be extinguished; and
- (b) DLRL may appropriate and use for the purposes of the authorised works so much of the site of the designated footpath and so much of the designated highway owned by DLRL as is bounded on both sides by land owned by DLRL.

(6) 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 1 of the 1961 Act.

(7) This article is subject to paragraph 2 of Schedule 8 and paragraph 3 of Schedule 12.

(8) In this article—

“designated highway” means so much of Hertsmere Road in the London Borough of Tower Hamlets as is comprised in the airspace directly beneath the underside of the railway viaduct but not below a point 5.3 metres above the level of the surface of Hertsmere Road at the date of the coming into effect of this Order;

“designated footpath” means the footpath in the London Borough of Newham at Royal Albert Station between points P1, P2 and P3;

“railway viaduct” means that part of the scheduled works proposed to carry the Bank to Canary Wharf Railway over Hertsmere Road in the London Borough of Tower Hamlets;

“replacement footpath” means the footpath in the London Borough of Newham at Royal Albert Station between points P3 and P4.

“temporary replacement footpath” means a temporary alternative route for pedestrians who could have used the designated footpath between a point as close as reasonably practicable to the commencement and termination points of the designated footpath.

Temporary stopping up of streets

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

(a) divert the traffic from the street; and

(b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Subject to paragraph (3), DLRL shall provide at all times reasonable access for pedestrians going to or from premises abutting a street affected by the exercise of the powers conferred by this article if there would otherwise be no such access.

(3) DLRL shall not be obliged to provide access for pedestrians going to or from premises abutting the footpath between Hertsmere Road and Aspen Way, in the London Borough of Tower Hamlets and shown between points T1 and T2 for the duration of that part of the construction of the authorised works which requires the temporary stopping up of that footpath.

(4) Without prejudice to the generality of paragraph (1), DLRL may exercise the powers conferred by this article in relation to the streets specified in columns (1) and (2) of Schedule 4 to this Order.

(5) DLRL shall not exercise the powers conferred by 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 (such consent not to be unreasonably withheld).

(6) Any person who suffers loss by the suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Access to works

11. DLRL may, for the purposes of the authorised works—

(a) form and lay out such means of access or improve such existing means of access, in the locations specified in columns (1) and (2) of Schedule 5 at or about the point marked “A” on the deposited plans; and

(b) with the approval of the highway authority (such approval not to be unreasonably withheld) form and lay out such other means of access or improve existing means of access at such locations within the Order limits as DLRL reasonably requires for the purposes of the authorised works.

Construction and maintenance of new or altered streets

12.—(1) Subject to paragraph (4), any street to be constructed under this Order shall be completed to the reasonable satisfaction of the highway authority and shall, unless otherwise agreed, be maintained by and at the expense of DLRL 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 (4), where a street is altered or diverted under this Order, the altered or diverted part of the street shall, when completed to the reasonable satisfaction of the street authority, unless otherwise agreed, be maintained by and at the expense of DLRL 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 Order shall have effect in relation to street works as respects which the provisions of Part 3 of the 1991 Act apply.

(4) Paragraphs (1) and (2) shall not apply in relation to the structure of any bridge or tunnel carrying a street over or under any railway of DLRL.

(5) In any action against DLRL in respect of loss or damage resulting from any failure by it to maintain a street under this article, it shall be a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that DLRL had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(6) For the purposes of a defence under paragraph (5), the court shall in particular have regard to the following matters—

- (a) the character of the street and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether DLRL knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street;
- (e) where DLRL could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant to prove that DLRL had arranged for a competent person to carry out or supervise the maintenance of the part of the street to which the action relates unless it is also proved that DLRL had given him proper instructions with regard to the maintenance of the street and that he had carried out those instructions.

Agreements with street authorities

13.—(1) A street authority and DLRL may enter into agreements with respect to—

- (a) the construction of any new street (including any structure carrying the street over or under the authorised works) under the powers conferred by this Order;
- (b) the strengthening or improvement of any street under the powers conferred by this Order;
- (c) the maintenance of any street or of the structure of any bridge or tunnel carrying a street over or under the authorised works;
- (d) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
- (e) the execution in the street of any of the works referred to in article 8 (power to execute street works).

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

- (a) provide for the street authority to carry out any function under this Order which relates to the street in question; and
- (b) contain such terms as to payment and otherwise as the parties consider appropriate.

Supplemental powers

Works in the Dock

14.—(1) Without prejudice to the other powers conferred by this Order or otherwise available to it, DLRL may within the designated area, for the purposes of or in connection with the construction, operation or maintenance of the authorised works and notwithstanding any interference thereby with any public or private rights—

- (a) construct, place, alter, relocate or replace any work or structure whether temporary or permanent;
- (b) close and de-water any part of the designated area and divert vessels and other craft from any part of the designated area;
- (c) use, appropriate and dispose of any materials 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 any vessel which is moored or left, whether that vessel has been moored or left lawfully or not;
- (f) temporarily moor or anchor vessels and structures and load and unload into and from such vessels or structures equipment, machinery, soil and any other materials in connection with the authorised works; and
- (g) temporarily interfere with, occupy and use the bed, waters and dock walls within the designated area,

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

(2) Except in the case of emergency, DLRL will use its 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.

(3) During the period of closure referred to in paragraph (1)(b), all rights of navigation along, and all obligations of the Board to maintain for navigation any waters within, the designated area or part thereof so closed, shall be suspended and unenforceable against the Board.

(4) DLRL shall pay compensation to any person entitled to compensation under the 1961 Act who suffers any loss or damage from the exercise of the powers conferred by paragraph 1(a) and (d).

(5) Any dispute as to a person’s entitlement to compensation under paragraph (4), or as to the amount of the compensation shall be determined under Part 1 of the 1961 Act.

(6) In this article “designated area” means that part of the Dock within the Order limits.

Discharge of water

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

(2) Any dispute arising from the exercise of the powers in paragraph (1) to connect to or use a public sewer or drain shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991⁽¹⁵⁾.

(3) DLRL shall not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as he may reasonably impose but shall not be unreasonably withheld.

(4) DLRL 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 person to whom the sewer or drain belongs, but such approval shall not be unreasonably withheld.

(5) DLRL shall not, in the exercise of the powers conferred by this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) DLRL 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 or any other polluting material.

(7) 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⁽¹⁶⁾.

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board, a local authority, or a harbour authority within the meaning of the Harbours Act 1964⁽¹⁷⁾;
- (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.

Protective works to buildings

16.—(1) Subject to the following provisions of this article, DLRL may at its own expense and from time to time carry out such protective works to any buildings lying within the Order limits as DLRL considers to be necessary or expedient.

(2) Protective 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 in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised works is first opened for use.

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

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

- (a) enter the building and any land within its curtilage; and

⁽¹⁵⁾ 1991 c. 56.

⁽¹⁶⁾ 1991 c. 57.

⁽¹⁷⁾ 1964 c. 40.

- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

DLRL shall, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective 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 whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 47 (arbitration).

(7) DLRL 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) protective 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 in the vicinity of the building is first opened for use, it appears that the protective works are inadequate to protect the building against damage caused by the construction or operation of that part of the works,

DLRL shall compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Without prejudice to article 46 (no double recovery), nothing in this article shall relieve DLRL 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 1 of the 1961 Act.

(11) In this article—

- (a) “building” includes any structure or erection or any part of a building, structure or erection; and
- (b) “protective works”, in relation to a building, means—
 - (i) underpinning, strengthening and any other external or internal 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;
 - (ii) any external or internal works the purpose of which is to remedy any damage which has been caused to the building by the construction, maintenance or operation of the authorised works; and
 - (iii) any external or internal works the purpose of which is to secure the safe operation of the authorised works or to prevent or minimise the risk of such operation being disrupted.

Town and country planning

17.—(1) In relation to the application of paragraph 3(c) of the Second Schedule of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Tree Preservation Order) Regulations 1969⁽¹⁸⁾ (including that paragraph as applied by regulation 3(ii) of the Town and Country Planning (Tree Preservation Order) (Amendment) and (Trees in Conservation Areas) (Exempted Cases) Regulations 1975⁽¹⁹⁾, or as incorporated in any tree preservation order), any direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to works authorised by this Order shall be treated as deeming the permission to have been granted on application made under Part 3 of that Act for the purposes of that Part.

(2) In relation to the application of article 5(1)(d) of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Trees) Regulations 1999⁽²⁰⁾ as incorporated in any tree preservation order or as having effect by virtue of regulation 10(1)(a) of those Regulations, any direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to the works authorised by this Order shall not be treated as an outline planning permission.

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

Power to survey and investigate land, etc.

18.—(1) DLRL may for the purposes of this Order—

- (a) survey or investigate any land within the Order limits;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions as DLRL 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 ecological or archaeological investigations on any such land;
- (d) place on, leave on and remove from the land apparatus for use in connection with the exercise of any of the powers conferred by sub-paragraphs (a) to (c); and
- (e) enter on the land for the purpose of exercising any of the powers conferred by sub-paragraphs (a) to (d).

(2) No land may be entered, or equipment placed or left on or removed from the 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 DLRL—

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

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

(5) DLRL 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 1 of the 1961 Act.

⁽¹⁸⁾ S.I.1969/17.

⁽¹⁹⁾ S.I. 1975/148.

⁽²⁰⁾ S.I. 1999/1892.

(6) Nothing in this article shall obviate the need to obtain scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979(21).

Obstruction of construction of authorised works

19. Any person who, without reasonable excuse—

- (a) obstructs any person acting under the authority of DLRL in setting out the lines of the scheduled works or in constructing any authorised work; or
- (b) interferes with, moves or removes any apparatus belonging to any person acting under the authority of DLRL,

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

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

20.—(1) DLRL may acquire compulsorily—

- (a) so much of the land shown on the deposited plans within the limits of deviation for the scheduled works shown on those plans and described in the book of reference as may be required for or in connection with the authorised works; and
- (b) so much of the land specified in columns (1) and (2) of Schedule 2 (being land shown on the deposited plans and described in the book of reference as lying within the limits of additional land to be acquired or used) as may be required for the purpose specified in relation to that land in column (3) of that Schedule,

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

(2) DLRL shall not acquire under paragraph (1), nor appropriate under article 25, the lands delineated on the deposited plans and thereon numbered 619, 632 and 633 in the London Borough of Tower Hamlets but may acquire easements or other rights, including the imposition of restrictive covenants, over those lands in accordance with article 23(1).

(3) This article is subject to article 25(2) (rights under or over streets).

Application of Part 1 of the Compulsory Purchase Act 1965

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

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

(2) Part 1 of the 1965 Act, as so applied, shall have effect as if 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.

(21) 1979 c. 46.

Application of Compulsory Purchase (Vesting Declarations) Act 1981

22.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981⁽²²⁾ 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—

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

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in 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 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 (Application of Part 1 of the Compulsory Purchase Act 1965).

Power to acquire new rights

23.—(1) DLRL may acquire compulsorily such easements or other rights over any land referred to in paragraph (1)(a) or (b) of article 20 (power to acquire land), or impose restrictive covenants affecting any such land, 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) Schedule 6 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 or the imposition of a restrictive covenant.

(3) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 6), where DLRL acquires a right or the benefit of a restrictive covenant over land under paragraph (1) it shall not be required to acquire a greater interest in that land.

(22) 1981 c. 66.

Power to acquire subsoil only

24.—(1) DLRL may acquire compulsorily so much of the subsoil of the land referred to in paragraph (1)(a) or (b) of article 20 (power to acquire land) 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 DLRL acquires any part of the subsoil of land under paragraph (1), DLRL shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) shall not prevent article 29 (acquisition of part of certain properties) from applying where DLRL acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Rights under or over streets

25.—(1) DLRL may enter upon and appropriate so much of the surface, subsoil of, or airspace over, any street shown on the deposited plans and described in the book of reference as may be required for the purposes of the authorised works and may use the surface, subsoil and air-space for those purposes or any other purpose ancillary to its undertaking.

(2) Subject to paragraph (4), the power under paragraph (1) may be exercised in relation to a street without DLRL being required to acquire any part of the street or any easement or right in the street and except in relation to a street which is subject to stopping up pursuant to article 9 (stopping up of streets), the powers of compulsory acquisition of land conferred by this Order shall not apply in relation to the street.

(3) Subject to paragraph (5), 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 DLRL 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 1 of the 1961 Act.

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

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

(5) Compensation shall not be payable under paragraph (3) to any person who is an 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.

Temporary possession of land

Temporary use of land for construction of works

26.—(1) DLRL may, in connection with the carrying out of the authorised works—

- (a) enter upon and take temporary possession of—
 - (i) the land specified in columns (1) and (2) of Schedule 7 for the purpose specified in relation to that land in column (3) of that Schedule in connection with the authorised works (or any of those works) so specified in column (4) of that Schedule; and
 - (ii) any of the land within the Order limits in respect of which no notice of entry has been served under section 11 of the 1965 Act or no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981;
- (b) remove any buildings and vegetation from the land referred to in sub-paragraph (a)(i) and (a)(ii); and
- (c) construct temporary works (including the provision of means of access) and buildings on the land referred to in sub-paragraph (a)(i) and (a)(ii).

(2) Not less than 14 days before exercising the powers of paragraph (1), DLRL shall serve notice of the intended entry or use on the owners and occupiers of the land.

(3) DLRL may not, without the agreement of the owners of the land, remain in possession of any land of which temporary possession has been taken under this article—

(a) in the case of land specified in columns (1) and (2) of Schedule 7, after the end of the period of 2 years beginning with the date of completion of the work specified in relation to that land in column (4) of that Schedule; or

(b) in the case of land within the Order limits, after the end of the period of 2 years beginning with the date of completion of the work for which temporary possession of the land was taken unless DLRL has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 in relation to that land.

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

(5) DLRL 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 1 of the 1961 Act.

(7) Without prejudice to article 46 (no double recovery), 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) Where DLRL takes possession of or uses any land under this article, it shall not be required to acquire the land or any interest in it.

(9) In this article and article 27 (temporary use of land for maintenance of work) "building" includes structure or any other erection.

(10) Section 13 of the 1965 Act shall apply to the temporary use of land authorised under this article to the same extent as it applies to the acquisition of land authorised under this Order by virtue of article 21(1) (application of Part 1 of the Compulsory Purchase Act 1965).

Temporary use of land for maintenance of works

27.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any of the scheduled works, DLRL may—

(a) enter upon and take temporary possession of any land within the Order limits and lying within 20 metres from any authorised work, if such possession is reasonably required for the purpose of, or in connection with, maintaining that work or any ancillary works connected with it or securing the safe operation of any such work; and

(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 DLRL 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 DLRL shall serve notice of the intended entry on the owners and occupiers of the land.

(4) DLRL 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, DLRL shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) DLRL 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 1 of the 1961 Act.

(8) Without prejudice to article 46 (no double recovery), 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 DLRL takes possession of land under this article, it shall not be required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act shall apply to the temporary use of land authorised under this article to the same extent as it applies to the acquisition of land authorised under this Order by virtue of article 21(1) (application of Part 1 of the Compulsory Purchase Act 1965).

(11) 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 public 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.

Compensation

Disregard of certain interests and improvements

28.—(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), “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

29.—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 21 (application of Part 1 of the Compulsory Purchase Act 1965)) 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 DLRL 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 DLRL 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 DLRL is authorised to acquire compulsorily under this Order.

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

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

the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which DLRL 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,

DLRL 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 to 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, DLRL 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

30.—(1) Subject to the provisions of this article, all private rights of way over land held or used by DLRL for the purposes of the authorised works or subject to compulsory acquisition under this Order shall be extinguished—

- (a) as from the use by DLRL of the land for the purposes of the authorised works;
- (b) as from the acquisition of the land by DLRL, whether compulsorily or by agreement; or
- (c) on the entry on the land by DLRL under section 11(1) of the 1965 Act,

whichever is sooner.

(2) Subject to the provisions of this article, all private rights of way over land owned by DLRL which is within the Order limits and is required for the purposes of this Order, shall be extinguished on the appropriation of the land for any of those purposes by DLRL.

(3) Subject to the provisions of this article, all private rights of way over land of which DLRL takes temporary possession under this Order shall be suspended and unenforceable for as long as DLRL remains in lawful possession of the land.

(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 1 of the 1961 Act.

(5) This article does not apply in relation to any right of way to which section 271 or 272 of the 1990 Act (extinguishment of rights of statutory undertakers, etc.) or paragraph 2 of Schedule 8 to this Order applies or would apply but for paragraph 2 of Schedule 12 to this Order.

(6) Paragraphs (1), (2) and (3) shall have effect subject to—

- (a) any notice given by DLRL before the completion of the acquisition of the land, DLRL's appropriation of it, DLRL's entry onto it or DLRL's taking temporary possession of it, as the case may be, that any or all of those paragraphs shall not apply to any right of way specified in the notice; and
- (b) any agreement made (whether before or after any of the events mentioned in paragraph (6) (a) and before or after the coming into force of this Order) between DLRL and the person in or to whom the right of way in question is vested or belongs.

(7) If any such agreement as is referred to in paragraph (6)(b) which is made with a person in or to whom the right of way is vested or belongs is expressed to have effect also for the benefit of those deriving title from or under him, it shall be effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(8) Paragraphs (1) and (2) shall not apply to any rights of way exercisable over the land referred to in article 20(2).

Time limit for exercise of powers of acquisition

31.—(1) After the end of the period of 5 years beginning with the day on which this Order comes into force—

- (a) no notice to treat shall be served under Part 1 of the 1965 Act, as applied to the acquisition of land by article 21 (application of Part 1 of the Compulsory Purchase Act 1965); and
- (b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981, as applied by article 22 (application of Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The power conferred by article 26 (temporary use of land for construction of works) to enter upon and take temporary possession of land shall cease at the end of the period mentioned in paragraph (1); but this paragraph shall not prevent DLRL from remaining in possession of land in accordance with article 26 (temporary use of land for construction of works) 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

OPERATION OF AUTHORISED WORKS

Power to lop trees overhanging authorised works

32.—(1) DLRL may fell or lop any tree or shrub near any part of the authorised works, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised works or any apparatus used for the purposes of the authorised works; or
- (b) from constituting a danger to passengers or other persons using the authorised works.

(2) In exercising the powers in paragraph (1), DLRL shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from the exercise of those powers.

(3) Nothing in this article shall be taken to affect the application of any tree preservation order made under section 198 of the 1990 Act.

(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.

PART 5

PROTECTIVE PROVISIONS

Statutory undertakers, etc.

33. The provisions of Schedule 8 shall have effect.

For protection of Network Rail Infrastructure Limited

34. The provisions of Schedule 9 shall have effect.

For protection of local highway authorities

35. The provisions of Schedule 10 shall have effect.

For protection of the Environment Agency

36. The provisions of Schedule 11 shall have effect.

For protection of specified undertakers

37. The provisions of Schedule 12 shall have effect.

For protection of British Waterways Board

38. The provisions of Schedule 13 shall have effect.

PART 6

MISCELLANEOUS AND GENERAL

Traffic regulation

39.—(1) Subject to the provisions of this article DLRL may, for the purposes of the construction of the authorised works and with the consent of the traffic authority in whose area the relevant street is situated (such consent not to be unreasonably withheld)—

- (a) prohibit or restrict the parking, stopping, waiting or the loading or unloading of vehicles, at any time, in the relevant streets;
- (b) suspend temporarily the use of any parking place within a relevant street; and
- (c) revoke any traffic regulation order in so far as it is inconsistent with any prohibition or restriction made by DLRL under this paragraph.

(2) DLRL shall consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (3).

(3) DLRL shall not exercise the powers of this article unless it has—

- (a) given not less than 6 weeks' notice in writing of its intention to do so to the chief officer of police and the traffic authority in whose area the relevant streets are situated; and
- (b) not less than 7 days before exercising any power conferred by this article, given notice of the intention to exercise that power by publishing a notice in a local newspaper circulating in the area.

(4) Any prohibition, restriction or other provision made by DLRL under sub-paragraph (1) (a), (b) or (c) shall have effect as if duly made by the traffic authority in whose area the street is situated as a traffic regulation order under the 1984 Act and the instrument by which it is effected may specify savings to which the prohibition, restriction or other provision is subject.

(5) Any prohibition or restriction made by DLRL under paragraph (1) above shall not apply to any vehicle of a statutory utility for so long as it is engaged in connection with the laying, erection, alteration, repair or inspection of any apparatus of that utility.

(6) In this article—

“the relevant streets” means the carriageway of the streets specified in columns (1) and (2) of Schedule 14; and

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider.

Application of landlord and tenant law

40.—(1) This article applies to any agreement for leasing to any person the whole or any part of the authorised works and any agreement entered into by DLRL with any person for the construction, maintenance, use or operation of the authorised works, or any part of them, so far as any such

agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(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.

Defence to proceedings in respect of statutory nuisance

41.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990⁽²³⁾ (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order shall be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows—

- (a) that the nuisance relates to premises used by DLRL for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works and that the nuisance is attributable to the carrying out of works which are being carried out in accordance with a notice served under section 60, or a consent given under section 61 or 65, of the Control of Pollution Act 1974⁽²⁴⁾; or
- (b) that the nuisance is a consequence of the operation of the works authorised by this Order and that it cannot reasonably be avoided.

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

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

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

(3) The provisions of this article are without prejudice to the application to the authorised works of section 122 of the 1993 Act (statutory authority as a defence to actions in nuisance, etc.) or any rule of common law having similar effect.

Disclosure of confidential information

42. A person who—

- (a) enters a factory, workshop or workplace in pursuance of the provisions of article 16 (protective works to building) or article 18 (power to survey and investigate land, etc.); and

⁽²³⁾ 1990 c. 43.

⁽²⁴⁾ 1974 c. 40.

- (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.

Application of certain railway enactments

43.—(1) Any enactment by which any railway or former railway of Network Rail comprised within the affected properties was authorised shall have effect subject to the provisions of this Order.

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

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

(3) In this article “affected properties” means any land described in the book of reference which is owned by Network Rail or in which Network Rail has an interest.

Certification of plans, etc.

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

45.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post; or
- (b) with the consent of the recipient and subject to paragraphs (6) to (8) by electronic transmission.

(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⁽²⁵⁾ 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

(25) 1978 c. 30.

- (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) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement shall be taken to be fulfilled where the recipient of the notice or other document to be transmitted has given his consent to the use of electronic transmission either in writing or by electronic transmission.
- (6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that he requires a paper copy of all or any part of that notice or other document the sender shall provide such a copy as soon as reasonably practicable.
- (7) A person may revoke his consent to the use of electronic transmission in accordance with paragraph (8).
- (8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—
- (a) he shall give notice in writing or by electronic transmission revoking any consent given by him for that purpose; and
- (b) such revocation shall be final and shall take effect on a date specified by the person in the notice but that date shall not be less than 7 days after the date on which the notice is given.
- (9) This article shall not be taken to exclude the employment of any method of service not expressly provided for by it.

No double recovery

46. 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, or under two or more different provisions of this Order.

Arbitration

47. Unless otherwise agreed between the parties, 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

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

2nd August 2007