
STATUTORY INSTRUMENTS

2013 No. 3244

TRANSPORT AND WORKS, ENGLAND
TRANSPORT, ENGLAND

**The Ashton Vale to Temple Meads and
Bristol City Centre Rapid Transit Order 2013**

Made - - - - *19th December 2013*

Coming into force - - *9th January 2014*

An application has been made to the Secretary of State in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006(1) for an order under sections 1, 3 and 5 of the Transport and Works Act 1992(2) (“the 1992 Act”).

The Secretary of State caused an inquiry to be held for the purposes of the application under section 11 of the 1992 Act.

The Secretary of State, having considered the objections made and not withdrawn and the report of the person who held the inquiry, has determined to make an Order giving effect to the proposals comprised in the application with modifications which in the opinion of the Secretary of State do not make any substantial change in the proposals.

The Secretary of State is satisfied that the provision of an alternative right of way for the street mentioned in Part 2 of Schedule 4 (streets to be stopped up and the provision of substitutes) is not required.

Notice of the Secretary of State’s determination was published in the London Gazette on 11th November 2013

The Secretary of State, in exercise of the powers conferred by sections 1, 3 and 5 of, and paragraphs 1 to 13 and 15 to 17 of Schedule 1 to, the 1992 Act, makes the following Order:—

(1) [S.I. 2006/1466](#).

(2) [1992 c. 42](#). Relevant amending instruments are [S.I. 1995/1541](#), [S.I. 1998/2226](#), [S.I. 2000/3199](#) and [S.I. 2006/958](#).

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Ashton Vale to Temple Meads and Bristol City Centre Rapid Transit Order 2013 and comes into force on 9th January 2014.

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961⁽³⁾;

“the 1965 Act” means the Compulsory Purchase Act 1965⁽⁴⁾;

“the 1980 Act” means the Highways Act 1980⁽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 1992 Act” means the Transport and Works Act 1992;

“address” includes any number or address used for the purposes of electronic transmission;

“the authorised guided busway” means any guided busway authorised by this Order;

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

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

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

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

“cycle track” has the same meaning as in the 1980 Act;

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

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

“guided busway” means a way provided for the use of vehicles which are constructed or adapted to carry more than 8 passengers for hire or reward and use a mode prescribed in article 2(e), (f), (g) or (h) of the Transport and Works (Guided Transport Modes) Order 1992⁽⁹⁾;

“harbour railway premises” means any premises of the promoter used for, or in connection with, the operation or maintenance of the harbour railway system including any depot, test track, building, site and any harbour railway vehicle;

“the harbour railway system” means the Bristol Harbour Railway as modified under this Order and any apparatus or facilities used for its operation and other associated authorised works;

(3) 1961 c. 33.

(4) 1965 c. 56.

(5) 1980 c. 66.

(6) 1984 c. 27.

(7) 1990 c. 8.

(8) 1991 c.22

(9) S.I. 1992/3231. As amended by S.I. 1997/1951.

“harbour railway vehicle” means any train using the harbour railway system;

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

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

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

“the Order limits” means the permanent limits and the temporary limits;

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

“owner”, in relation to land, has the same meaning as in the Acquisition of Land Act 1981(10);

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

“the permanent limits” means the limits of deviation and of land to be acquired or used and the limits of additional land to be acquired or used, as shown on the works and land plans, described in the book of reference and (in the case of the additional land) specified in columns (1) and (2) of Schedule 2 (additional land which may be acquired or used);

“the promoter” means Bristol City Council and North Somerset Council together or either of them;

“rapid transit premises” means any premises of the promoter used for, or in connection with, the operation or maintenance of the rapid transit system, including any depot, test busway, building, park and ride site and any rapid transit vehicle;

“the rapid transit system” means the authorised guided busway and any apparatus or facilities used for its operation and other associated authorised works;

“rapid transit vehicle” means any vehicle lawfully using the rapid transit system;

“the relevant part of the Floating Harbour” means so much of the Floating Harbour as is within the Order limits;

“the relevant part of the River” means so much of the River Avon (New Cut) as is within the Order limits;

“the rights of way plans” means the rights of way plans included in the Order plans;

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

“the sections” means the sections shown in the Order plans;

“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 temporary limits” means the limits of land to be used temporarily as shown on the works and land plans, described in the book of reference and specified in columns (1) and (2) of Schedule 7 (land of which temporary possession may be taken);

“the transport systems” means the rapid transit system and the harbour railway system together or either of them;

“the tribunal” means the Upper Tribunal;

“watercourse” includes all docks, rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows (whether or not the flow is intermittent) except a public sewer or drain; and

“the works and land plans” means the works and land plans included in the Order plans.

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

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

(5) All distances, directions, lengths, points and areas stated in the description of the scheduled works or in any description of powers or lands are approximate and distances between points on a scheduled work are taken to be measured along the scheduled work.

Application of enactments relating to railways

3.—(1) The provisions of the Railway Regulation Acts 1840 to 1893⁽¹¹⁾ do not apply in relation to the harbour railway system.

(2) The provisions of the Highway (Railway Crossings) Act 1839⁽¹²⁾ do not apply in relation to harbour railway system.

Application of the 1991 Act

4.—(1) Works executed under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of Part 3 of the 1991 Act (street works in England and Wales) 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) or section 184 of that Act (vehicle crossings).

(2) In Part 3 of the 1991 Act references, in relation to major highway works, to the highway authority concerned are, in relation to works which are major transport works by virtue of paragraph (1), to be construed as references to the promoter.

(3) The following provisions of the 1991 Act do 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 58A (restriction on works following substantial streetworks);
- 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).

(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

⁽¹¹⁾ 1840 c. 97, 1842 c. 55, 1868 c. 119, 1873 c. 48 and 1889 c. 57.

⁽¹²⁾ 1839 c. 45.

code of practice issued or approved under those provisions apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the promoter under the powers conferred by article 11 (temporary stopping up of streets) 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), subject to paragraph (6);
- section 55 (notice of starting date of works), subject to paragraph (6);
- 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); and
- 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) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

(7) Nothing in article 13 (construction and maintenance of new, altered or diverted streets)—

- (a) affects the operation of section 87 of the 1991 Act (prospectively maintainable highways), and the promoter is not by reason of any duty under that article to maintain a street to be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or
- (b) has effect in relation to street works as respects which the provisions of Part 3 of the 1991 Act apply.

(8) To such extent as is reasonably necessary for protecting the transport systems on any street and their operation and use the promoter has the same powers as respects reinstatement as a street authority has under section 72 of the 1991 Act.

(9) The rapid transit system is to be treated as a tramway for the purposes of Part 3 of the 1991 Act and accordingly the provisions of that Part (relating to tramway undertakings and tramways) as modified by this article apply to the transport systems.

(10) In its application to the transport systems section 93(3) of the 1991 Act (works affecting level crossings or tramways) also permits the promoter to make reasonable requirements—

- (a) for allowing it facilities to monitor the execution of the works; and
- (b) for the protection of the transport systems.

PART 2

WORKS PROVISIONS

Principal powers

Power to construct and maintain works

5.—(1) The promoter may construct and maintain either Work No. 1A or Work No. 1B (but not both) together with the remainder of the scheduled works.

(2) Subject to article 6 (power to deviate), the scheduled works may only be constructed in the lines or situations shown on the works and land plans and in accordance with the levels shown on the sections.

(3) Subject to paragraph (6), the promoter may 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 scheduled works, namely—

- (a) stations, depots, platforms, junctions and stopping places;
- (b) buildings and other works required for, or in connection with, the control, management or maintenance of the transport systems or the control or management of any vehicular and pedestrian traffic on or in the transport systems;
- (c) works required for the strengthening, improvement, maintenance or reconstruction of any street;
- (d) works for the strengthening, alteration or demolition of any building;
- (e) works to alter the position of any street furniture or apparatus, including mains, sewers, drains, pipes, cables and lights;
- (f) works to alter the course of, or otherwise interfere with, watercourses;
- (g) landscaping, ecological and other works to mitigate any adverse effects of the construction, maintenance or operation of the other authorised works; and
- (h) facilities and works for the benefit or protection of land or premises affected by the other authorised works.

(4) Subject to paragraph (6), the promoter may 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 scheduled works.

(5) The promoter may remove any works constructed by it under this Order which have been constructed as temporary works or which it no longer requires.

(6) Paragraphs (3) and (4) only authorise the carrying out or maintenance of works—

- (a) within the Order limits; or
- (b) within the boundaries of any street along which the construction of any part of the transport systems is shown on the works and land plans, or which has a junction with such a street.

(7) The powers conferred by this article must not be exercised within the boundaries of a street outside of the Order limits which has a junction with a street in which the construction of the transport systems is shown on the works and land plans without the consent of the street authority but such consent must not be unreasonably withheld.

(8) The promoter may in constructing or maintaining any part of the harbour railway system which is laid along a street lay down such number of switches and crossings as may be necessary or expedient.

Power to deviate

- 6.—(1) In constructing or maintaining any of the scheduled works, the promoter may—
- (a) deviate laterally from the lines or situations shown on the works and land plans within the Order limits relating to that work shown on those plans; and
 - (b) deviate vertically from the levels shown on the sections—
 - (i) to any extent not exceeding 3 metres upwards; and
 - (ii) to any extent downwards as may be necessary or expedient.
- (2) The promoter may construct and maintain any emergency and maintenance track comprised in a scheduled work at a different level to the guided busway which it adjoins.
- (3) The promoter may, in constructing and maintaining any part of the authorised guided busway provide within the limits of deviation such gaps in the mode of guidance adopted and such number of ways, cross-overs, lay-bys, bus parking areas and sidings as may be necessary or expedient.
- (4) Without limitation on the scope of paragraph (1)—
- (a) in constructing and maintaining Work Nos. 1A, 1B and 2 the promoter may, to the extent it thinks fit, deviate from the design of the bridges shown on the sections, including by varying the number of any supporting columns or other structures, the distances between them and the height or clearance above the level of any land underneath the bridges; and
 - (b) in constructing and maintaining the scheduled works the promoter may, to the extent it thinks fit, deviate laterally from their points of commencement and termination shown on the works and land plans.

Streets

Power to alter layout, etc., of streets

- 7.—(1) The promoter may alter the layout of, and carry out other ancillary works in, any street specified in column (1) of Part 1 or Part 2 of Schedule 3 (streets subject to alteration of layout) in the manner specified in relation to that street in column (2) of Part 1 or Part 2 of that Schedule.
- (2) Without limitation on the scope of the specific powers conferred by article 5 (power to construct and maintain works) or paragraph (1) but subject to paragraph (3), the promoter may, for the purpose of constructing, maintaining or using the transport systems, alter the layout of a street within the permanent limits and the layout of any street having a junction with such a street; and, without limitation on the scope of that power, the promoter 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 or increase the width of any such kerb, footway, cycle track or verge;
 - (c) replace or alter the surface or surface treatment of the street;
 - (d) reduce the width of the carriageway of the street by forming a reserved area in the street as a stopping place for rapid transit vehicles or harbour railway vehicles or by carrying out other works for that purpose;
 - (e) carry out works for the provision or alteration of parking places, loading bays, bus stop clearways, cycle tracks and bus laybys;
 - (f) carry out traffic calming works which are of a description prescribed in the Highways (Traffic Calming) Regulations 1999⁽¹³⁾ and which are carried out in compliance with those regulations;

(13) S.I. 1999/1026.

- (g) carry out works to the carriageway of the street for the purpose of deterring or preventing vehicles other than rapid transit vehicles or harbour railway vehicles from passing along the transport systems; and
- (h) make and maintain crossovers, sidings or passing places.

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

Power to keep apparatus in streets

8.—(1) The promoter may, for the purposes of or in connection with the construction, maintenance and use of the transport systems, place and maintain in any street in which the transport systems are constructed or which has a junction with such a street any work, equipment or apparatus including, without limitation on the scope of that power, foundations, platforms, road islands, substations, electric lines and any electrical or other apparatus.

(2) The powers conferred by this article must not be exercised within the boundaries of a street outside of the Order limits which has a junction with a street in which the construction of the transport systems is shown on the works and land plans without the consent of the street authority, but such consent must not be unreasonably withheld.

(3) 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 or apparatus in a street includes a reference to any work, equipment or apparatus under, over, along or upon the street.

Power to execute street works

9.—(1) The promoter may, for the purpose of exercising the powers conferred by article 8 (power to keep apparatus in streets) or any other provision of this Order, enter upon any street in which the transport systems are constructed or which has a junction with such a street and may execute any works required for or incidental to the exercise of those powers including, without limitation on the scope of that power, breaking up or opening the street, or any sewer, drain or tunnel under it, or tunnelling or boring under the street.

(2) This article is subject to paragraph 3 of Schedule 9 (provisions relating to statutory undertakers, etc.).

(3) The powers conferred by this article must not be exercised within the boundaries of a street outside of the Order limits which has a junction with a street in which the construction of the transport systems is shown on the works and land plans without the consent of the street authority, but such consent must not be unreasonably withheld.

Construction of new and stopping up of existing streets

10.—(1) The promoter may in connection with the authorised works construct the new streets specified in column (2) of Part 3 of Schedule 4 (streets to be stopped up and the provision of substitutes) by reference to the letters and numbers shown on the rights of way plans.

(2) Subject to the provisions of this article, the promoter may, in connection with the construction of the authorised works, stop up each of the streets specified in column (1) of Part 1 and Part 2 of Schedule 4 to the extent specified, by reference to the letters and numbers shown on the rights of way plans, in column (2) of Part 1 and Part 2 of that Schedule.

(14) 1989 c. 29.

(3) No street specified in column (1) of Part 1 of Schedule 4 (being a street to be stopped up for which a substitute is to be provided) is to be wholly or partly stopped up under this article unless—

- (a) the new street to be substituted for it, which is specified in relation to it in column (3) 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 previously used the street to be stopped up is first provided and then maintained by the promoter, to the reasonable satisfaction of the street authority, between the commencement and termination points of the street to be stopped up, until the completion and opening of the new street in accordance with sub-paragraph (a).

(4) No street specified in column (1) of Part 2 of Schedule 4 (being a street to be stopped up for which no substitute is to be provided) is to be wholly or partly stopped up under this article unless one of the conditions specified in paragraph (5) is satisfied in relation to all the land which abuts on either side of the street to be stopped up.

(5) The conditions referred to in paragraph (4) are that—

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

(6) Where a street has been stopped up under this article—

- (a) all rights of way over or along it are extinguished; and
- (b) the promoter may appropriate and use for the purposes of its transport systems undertakings so much of the site of the street as is bounded on both sides by land owned or appropriated by the promoter.

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

(8) This article is subject to paragraph 2 of Schedule 9 (provisions relating to statutory undertakers, etc.).

Temporary stopping up of streets

11.—(1) The promoter 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) Without limitation on the scope of paragraph (1), the promoter may use any street stopped up under the powers conferred by this article as a temporary working site.

(3) The promoter must 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.

(4) Without limitation on the scope of paragraph (1), the promoter may exercise the powers conferred by this article in relation to the streets specified in—

- (a) column (1) of Parts 1 and 2 of Schedule 4 (streets to be stopped up and the provision of substitutes); and

- (b) column (1) of Schedule 5 (streets to be temporarily stopped up), to the extent specified in relation to each street, by reference to the letters and numbers shown on the works and land plans, as set out in column (2) of Parts 1 and 2 of Schedule 4, and Schedule 5.
- (5) The promoter must 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 which may attach reasonable conditions to any consent, but such consent must not be unreasonably withheld.
- (6) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Access to works

12. The promoter may, for the purposes of the construction, operation or maintenance of the authorised works, form and lay out such means of access, or improve such existing means of access, at such locations within the Order limits as the promoter reasonably requires for the purposes of the authorised works, as may be approved by the highway authority, but such approval must not be unreasonably withheld.

Construction and maintenance of new, altered or diverted streets

13.—(1) Any street to be constructed under this Order must be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed between the promoter and the highway authority, must be maintained by and at the expense of the promoter for a period of 12 months from its completion and from the expiry of that period by and at the expense of the highway authority.

(2) Where a street is altered or diverted under this Order, the altered or diverted part of the street must, when completed to the reasonable satisfaction of the street authority, unless otherwise agreed, be maintained by and at the expense of the promoter for a period of 12 months from its completion and after the expiry of that period by and at the expense of the street authority.

(3) Paragraphs (1) and (2) do not apply in relation to the structure of any bridge carrying a street over the transport systems or carrying the transport systems over a street and except as provided in those paragraphs the promoter is not liable to maintain the surface of any street in, on, under or over which the scheduled works are constructed, or the immediate approaches to any such street, unless otherwise agreed with the street authority.

(4) In any action against the promoter in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the promoter 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.

(5) For the purposes of a defence under paragraph (4), the court must in particular have regard to the following matters—

- (a) the character of the street, including its use for the transport systems, 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 the promoter 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 the promoter 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 the promoter 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 the promoter had given the competent person proper instructions with regard to the maintenance of the street and that the competent person had carried out those instructions.

Agreements with street authorities

- 14.—**(1) A street authority and the promoter may enter into agreements with respect to—
- (a) the construction of any new street (including any structure carrying the street over or under the transport systems) under the powers conferred by this Order;
 - (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
 - (c) the maintenance of any street along or across which the transport systems are operating, or of the structure of any bridge or tunnel carrying a street over or under the transport systems;
 - (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 9 (power to execute street works).
- (2) Such an agreement may, without limitation on the scope 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.

Guided busway highway crossings

15.—(1) Where by virtue of the creation of a highway or other road after the day on which application was made for this Order the authorised guided busway would cross the highway or road the promoter may construct the authorised guided busway so as to enable vehicles upon it to cross on the level the highway or road.

(2) Any traffic sign placed under the powers conferred by article 39 (traffic signs) on or near a highway or other road to which the public has access is to be treated for the purposes of section 64(4) of the 1984 Act as having been placed as provided by that Act.

(3) The highway authority and the promoter may enter into agreements with respect to the construction and maintenance of any new busway crossing; and such an agreement may contain such terms as to payment or otherwise as the parties consider appropriate.

(4) In this article “new busway crossing” means the place at which the authorised guided busway crosses a highway or other road on the level under the powers conferred by this article.

Supplemental powers

Temporary closure of and works in waterways

16.—(1) The promoter may, in connection with the construction of Work Nos. 3, 5A and 7, temporarily—

- (a) interfere with the relevant part of the River or the relevant part of the Floating Harbour by constructing or maintaining caissons, cofferdams or such other temporary works as the promoter considers necessary or expedient;
- (b) moor or anchor barges or other vessels or craft in the relevant part of the River or the relevant part of the Floating Harbour, and may load or unload into and from such barges, other vessels or craft equipment, machinery, soil and any other materials;
- (c) close to navigation the relevant part of the River or the relevant part of the Floating Harbour; and
- (d) remove the water from the relevant part of the River or the relevant part of the Floating Harbour that is so interfered with or closed.

(2) During the period of any closure referred to in paragraph (1)(c), all rights of navigation and other rights relating to, and any obligations of the navigation authority to manage, any part of the relevant part of the River or the relevant part of the Floating Harbour that has been closed are suspended and unenforceable against the navigation authority.

(3) The powers conferred by paragraph (1) may only be exercised in a way which secures—

- (a) that no more of the relevant part of the River or the relevant part of the Floating Harbour is closed to navigation at any time than is necessary in the circumstances; and
- (b) that, if complete closure to navigation of the relevant part of the River or the relevant part of the Floating Harbour or both becomes necessary, all reasonable steps are taken to secure that the period of closure is kept to a minimum and that the minimum obstruction, delay or interference is caused to vessels or craft which may be using or intending to use the part so closed.

(4) In exercising the powers conferred by paragraph (1) in relation to the relevant part of the River or the relevant part of the Floating Harbour or both the promoter must—

- (a) take such reasonable steps as are necessary to ensure that—
 - (i) the flow of water in the River Avon (New Cut) or the Floating Harbour or both, as the case may be, is maintained unaltered; and
 - (ii) the functioning of any intake or discharge along the River Avon (New Cut) or the Floating Harbour or both is unaffected; and
- (b) without affecting sub-paragraph (a), keep any interference with water levels or flows to the minimum reasonably necessary to construct the works.

(5) Any person who suffers loss or damage as the result of—

- (a) the suspension of any private right of navigation under this article; or
- (b) any effect of the exercise of the powers conferred by paragraph (1) on the functioning of any intake or discharge along the relevant waterway,

is entitled to be paid compensation for such loss or damage by the promoter, to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) In this paragraph “navigation authority” means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary, harbour or dock.

Discharge of water

17.—(1) The promoter 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, or in any street along which the transport systems are authorised to operate, make openings into, and connections with, the watercourse, sewer or drain.

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

(3) The promoter must 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 that person may reasonably impose but must not be unreasonably withheld.

(4) The promoter must not make any opening into any public sewer or drain except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The promoter must 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) The promoter must 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, oil or matter in suspension.

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2010⁽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⁾; and

(b) other expressions, excluding watercourses, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

Safeguarding works to buildings

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

(2) Safeguarding works may be carried out—

(a) at any time before or during the construction, in the vicinity of the building, of any part of the authorised works (other than works authorised by this article); or

(b) after the completion of the construction of that part of the authorised works (other than works authorised by this article), at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised works is first opened for use.

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

⁽¹⁵⁾ 1991 c. 56.

⁽¹⁶⁾ S.I. 2010/675.

⁽¹⁷⁾ 1964 c. 40.

(4) For the purpose of carrying out safeguarding works under this article to a building the promoter may—

- (a) enter the building and any land within its curtilage; and
- (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 safeguarding works to a building;
- (b) a right under paragraph (3) to enter a building and any 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,

the promoter must, 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 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 carry out the safeguarding works or to enter the building or land to be referred to arbitration under article 67 (arbitration).

(7) The promoter must compensate the owners and occupiers of any building or land in relation to which the powers conferred by 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 promoter must compensate the owners and occupiers of the building for any damage sustained by them.

(9) Without affecting article 66 (no double recovery), nothing in this article relieves the promoter from any liability to pay compensation under section 10(2) of the 1965 Act.

(10) Any compensation payable under paragraph (7) or (8) is to be determined, in case of dispute, under Part 1 of the 1961 Act.

(11) In this article—

- (a) “safeguarding works”, in relation to a building, means—
 - (i) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the construction, maintenance or operation of the authorised works;
 - (ii) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, maintenance or operation of the authorised works; and
 - (iii) any works the purpose of which is to secure the safe operation of the transport systems or to prevent or minimise the risk of such operation being disrupted; and

- (b) “safeguarding limits” means the limits of land for safeguarding works shown on the works and land plans.

Planning permission

19.—(1) Planning permission which is deemed by a direction under section 90(2A) of the 1990 Act to be granted in relation to the authorised works is to 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 that Act).

(2) For the purpose of section 262(1) of the 1990 Act (meaning of “statutory undertakers”) the rapid transit system is to be regarded as a road transport undertaking.

Power to survey and investigate land, etc.

20.—(1) The promoter may for the purposes of this Order—

- (a) survey or investigate any land within the Order limits or the safeguarding limits, any street along which the transport systems are authorised to be constructed and any street having a junction with such a street;
- (b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions as the promoter thinks fit on the land to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limitation on the scope of sub-paragraph (a), carry out archaeological investigations on any such land;
- (d) take steps to protect or remove any flora or fauna on the land where the flora or fauna may be affected by the carrying out of the authorised works;
- (e) 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 (d); and
- (f) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (e).

(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 the promoter—

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

(4) No trial holes are to be made under this article—

- (a) in a carriageway or footway without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

(5) The promoter must 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 1 of the 1961 Act.

(6) Nothing in this article overrides the requirement for scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979(**18**).

Mode of construction and operation of the harbour railway system

21.—(1) Where the harbour railway system is constructed along a street or in any place to which the public has access (including any place to which the public has access only on making a payment), the promoter must take such care as in all the circumstances is reasonable to ensure that the authorised tramway is constructed and maintained so that the street or other place is safe for other users.

(2) When considering what measures are required under paragraph (1) the promoter must have particular regard to the character and usage of the street or other place and to those who could reasonably be expected to use it.

(3) Where the harbour railway system has been constructed in a street, works by any person which affect or are likely to affect the promoter's obligations under paragraph (1), including works to any street surfaces and works affecting any equipment or apparatus placed in the street under article 8 (power to keep apparatus in streets), must not be carried out without the consent of the promoter, which may be given subject to such reasonable terms and conditions as the promoter may require but must not be unreasonably withheld.

Obstruction of construction of authorised works

22. Any person who, without reasonable excuse—

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

is 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

23.—(1) Subject to paragraph (2) the promoter may acquire compulsorily so much of the land shown on the works and land plans as lying within the permanent limits as may be required for the authorised works and may use any land so acquired for those purposes or for any other purposes that are ancillary to its transport systems undertakings.

(2) The promoter may exercise powers under this article and article 26 (power to acquire new rights) in respect of either—

- (a) any or all of the land comprised in plots numbered 01A/01, 01A/02, 01A/03, 01A/04, 01A/05, 01A/06, 01A/07, 01A/08, 01A/09, 01A/11, 01A/12, 01A/13, 01A/14, 02A/01, 02A/04, 04A/01, 04A/04, 04A/05, 04A/06, 04A/07, 04A/08 and 04A/09 on the works and land plans (“land required for Work No. 1A”); or
- (b) any or all of the land comprised in plots numbered 01B/01, 01B/02, 01B/03, 01B/04, 01B/05, 01B/06, 01B/07, 01B/08, 01B/09, 01B/10, 01B/11, 01B/12, 02B/01, 04B/01, 04B/04, 04B/05, 04B/06, 04B/07, 04B/08 and 04B/09 on the works and land plans (“land required for Work No. 1B”),

but must not acquire land required for Work No. 1A and land required for Work No. 1B.

Application of Part 1 of the 1965 Act

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

- (a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981⁽¹⁹⁾ applies; and
- (b) as if this Order were a compulsory purchase order under that Act.

(2) Part 1 of the 1965 Act, as applied, has 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.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

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

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

(3) In section 3 (preliminary notices), for subsection (1) there is substituted—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority must 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 a local newspaper circulating in the area in which the land is situated.”.

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

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

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

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or reversion; or
- (b) that person 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 is inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) is 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)” are omitted.

(8) References to the 1965 Act are construed as references to that Act as applied to the acquisition of land under article 24 (application of Part 1 of the 1965 Act).

⁽¹⁹⁾ 1981 c. 67.

⁽²⁰⁾ 1981 c. 66.

Power to acquire new rights

26.—(1) Subject to article 23(2) (power to acquire land) the promoter may compulsorily acquire such easements or other rights over any land within the permanent limits as may be required for any purpose for which that land may be acquired, 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 6 (modification of compensation and compulsory purchase enactments for creation of new rights)), where the promoter acquires a right over land under paragraph (1) the promoter is not required to acquire a greater interest in that land.

(3) Schedule 6 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application to the compulsory acquisition under this article of a right over land by the creation of a new right.

Rights under or over streets

27.—(1) The promoter may enter upon and appropriate so much of the surface, subsoil of, or air space over, any street shown on the works and land 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 the transport systems.

(2) Subject to paragraph (4), the power under paragraph (1) may be exercised in relation to a street without the promoter being required to acquire any part of the street or any easement or right in 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 the promoter acquiring any part of that person's interest in the land, and who suffers loss by the exercise of that power, is entitled to compensation, the amount of such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) Paragraph (2) does 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 is not 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

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

- (a) enter upon and take temporary possession of—
 - (i) so much of the land shown on the works and land plans as lying within the temporary limits for the purpose specified in relation to that land in column (3) of Schedule 7 (land of which temporary possession may be taken) relating to the scheduled works (or any of them) specified in column (4) of that Schedule; and
 - (ii) any of the land within the permanent 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 that land; and
 - (c) construct temporary works (including the provision of means of access) and buildings on the land.
- (2) Not less than 14 days before exercising the powers of paragraph (1) the promoter must serve notice of the intended entry on the owners and occupiers of the land.
- (3) The promoter 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 lying within the temporary limits, 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 Schedule 7; or
 - (b) in the case of land within the permanent 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 the promoter 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, the promoter must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the promoter is not required to replace a building removed under this article.
- (5) The promoter is not required to reinstate plot numbers 01A/10, 02A/02 or 02A/03 following the completion of Work No. 1A.
- (6) The promoter must 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, is to be determined under Part 1 of the 1961 Act.
- (8) Without affecting article 66 (no double recovery), nothing in this article affects 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 promoter takes possession of land under this article, the promoter is not required to acquire the land or any interest in it.
- (10) Section 13 of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 24(1) (application of Part 1 of the 1965 Act).

Temporary use of land for maintenance of works

- 29.**—(1) Subject to paragraph (2), at any time during the maintenance period relating to any of the scheduled works, the promoter may—
- (a) enter upon and take temporary possession of any land within the Order limits reasonably required for the purpose of maintaining the 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) does not authorise the promoter 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 promoter must serve notice of the intended entry on the owners and occupiers of the land.

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

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

(6) The promoter must 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, is to be determined under Part 1 of the 1961 Act.

(8) Without affecting article 66 (no double recovery), nothing in this article affects 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 promoter takes possession of land under this article, the promoter is not required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 24(1) (application of Part 1 of the 1965 Act).

(11) In this article, "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.

Compensation

Disregard of certain interests and improvements

30.—(1) In assessing the compensation (if any) payable to any person on the acquisition from that person of any land or interest in land under this Order, the tribunal must 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 that person is, or was at the time when the building was erected, the works executed or the improvement or alteration made, directly or indirectly concerned.

Set-off for enhancement in value of retained land

31.—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal must set off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity, which will accrue to that person by reason of the construction of the authorised works.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 26 (power to acquire new rights), the tribunal must set off against the value of the rights so acquired—

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

which will accrue to that person by reason of the construction of the authorised works.

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

Supplementary

Acquisition of part of certain properties

32.—(1) This article applies instead of section 8(1) of the 1965 Act (as applied by article 24 (application of Part 1 of the 1965 Act)) in any case where—

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

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the promoter a counter-notice objecting to the sale of the land subject to the notice to treat and stating that the owner 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 must 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 of whether the owner must be required to sell only the land subject to the notice to treat is, unless the promoter agrees to take the land subject to the counter-notice, to 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 must 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 is deemed to be a notice to treat for that part.

(7) If on such a 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 is 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 promoter is authorised to acquire compulsorily under this Order.

(8) If the promoter 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 is 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 promoter 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 promoter 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, must pay to the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

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

Extinguishment or suspension of private rights of way

33.—(1) Subject to the provisions of this article, all private rights of way over land subject to compulsory acquisition under this Order are extinguished—

(a) as from the date of acquisition of the land by the promoter, whether compulsorily or by agreement; or

(b) on the date of entry on the land by the promoter 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 the promoter which is within the permanent limits and is required for the purposes of this Order, are extinguished on the appropriation of the land for any of those purposes by the promoter.

(3) Subject to the provisions of this article, all private rights of way over land of which the promoter takes temporary possession under this Order are suspended and unenforceable for as long as the promoter 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 is 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 9 (provisions relating to statutory undertakers, etc.) applies.

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

(a) any notice given by the promoter before the completion of the acquisition of the land, the promoter's appropriation of it, the promoter's entry onto it or the promoter's taking

temporary possession of it, as the case may be, that any or all of those paragraphs do 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 subparagraph (a) and before or after the coming into force of this Order) between the promoter 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 that person, it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

Open space

34.—(1) The Open Space Land is not, by reason of the exercise of powers under this Order, to vest in the promoter until the promoter has acquired the Exchange Land and, upon a request made by the promoter, North Somerset Council has certified that a scheme for the provision of the Exchange Land as open space has been implemented to its satisfaction.

(2) Upon the requirements of paragraph (1) being satisfied, the Exchange Land will vest in North Somerset Council subject to the like rights, trusts and incidents as attached to the Open Space Land and, on the vesting of the Exchange Land, the Open Space Land will be discharged from all rights, trusts and incidents to which it was previously subject.

(3) In this article—

- (a) “Exchange Land” means the land in North Somerset shown numbered 01A/01, 01B/01, 02A/01 and 02B/01 on the works and land plans; and
- (b) “Open Space Land” means either—
 - (i) if Work No. 1A is constructed, the land in North Somerset shown numbered 01A/09 and the land in the City of Bristol shown numbered 01A/11, 01A/12, 01A/13, 01A/14, 02A/04 and 04A/01 on the works and land plans; or
 - (ii) if Work No. 1B is constructed, the land in North Somerset shown numbered 01B/09 and 01B/10 and the land in the City of Bristol shown numbered 01B/11, 01B/12 and 04B/01, on the works and land plans.

(4) Section 19 of the Acquisition of Land Act 1981 has effect in relation to any open space within the meaning of subsection (4) of that section as if in paragraph (1)(a) of that section the words “the persons in whom the land purchased was vested” were substituted by the words “the local authority in whose area that land is situated”.

Time limit for exercise of powers of acquisition

35.—(1) After the end of the time limit—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act, as applied to the acquisition of land by article 24 (application of Part 1 of the 1965 Act); and
- (b) no declaration is to be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981, as applied to this Order by article 25 (application of Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The powers conferred by article 28 (temporary use of land for construction of works) will cease at the end of the period mentioned in paragraph (1), but nothing in this paragraph prevents the promoter from remaining in possession of land after the end of that period, if the land was entered and possession of it was taken before the end of that period.

(3) In this article “the time limit” means—

- (a) In relation to land comprised in plots numbered 09/03, 09/08 to 09/11 and 09/22, the period of 2 years beginning with the day on which this Order comes into force; and
- (b) In all other cases, the period of 5 years beginning with the day on which this Order comes into force.

PART 4

OPERATION OF THE TRANSPORT SYSTEMS

Power to operate and use transport systems

36.—(1) The promoter may operate and use the rapid transit system as a system, or part of a system, of transport for the carriage of passengers and goods.

(2) The promoter may operate and use the harbour railway system for the carriage of passengers and goods.

(3) Subject to paragraph (5) and article 45 (powers of disposal, agreements for operation, etc.), the promoter has, for the purpose of operating the rapid transit system, the exclusive right to use the authorised guided busway and any apparatus or facilities used for operation of the rapid transit system and to permit others to do so on such terms as it considers appropriate.

(4) Any person who, without the consent of the promoter or other reasonable excuse, uses the apparatus mentioned in paragraph (3) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) Nothing in this article restricts the exercise of any public right of way over any part of a street in which apparatus is situated in pursuance of the provisions of this Order except to the extent that the exercise of the right is constrained by the presence of the apparatus.

Power to charge fares

37.—(1) The promoter may demand, take and recover or waive such charges for carrying passengers or goods on the transport systems, or for any other services or facilities provided in connection with the transport systems, as it thinks fit.

(2) The promoter may enter into and carry into effect agreements with other persons providing public passenger transport services with regard to the issue of tickets and the making of through ticketing arrangements or for the purpose of generally co-ordinating the provision of those services with the operation of the transport systems.

(3) In this article, “public passenger transport service” has the meaning given by section 63(10) (a) of the Transport Act 1985(21).

Removal of obstructions

38.—(1) If any obstruction is caused to rapid transit vehicles or harbour railway vehicles by a vehicle waiting, loading, unloading or breaking down on any part of the transport systems, the person in charge of the vehicle must immediately remove it; and if that person fails to do so the promoter may take all reasonable steps to remove the obstruction and may recover the expenses reasonably incurred in doing so from—

- (a) any person by whom the vehicle was put or left so as to become an obstruction to rapid transit vehicles or harbour railway vehicles using the transport systems; or

(21) 1985 c. 67.

(b) any person who was the owner of the vehicle at that time unless that person shows that, at that time, the person was not concerned in or aware of the vehicle being so put or left.

(2) If any obstruction is caused to rapid transit vehicles or harbour railway vehicles by a load falling on the transport systems from a vehicle, the person in charge of the vehicle must remove the load immediately from the transport systems; and if that person fails to do so, the promoter may take all reasonable steps to remove the load and may recover the expenses reasonably incurred in doing so from—

(a) any person who was in charge of the vehicle at the time when the load fell from it; or

(b) any person who was the owner of the vehicle at that time unless that person shows that, at that time, the person was not concerned in, or aware of, the vehicle being in the place at which the load fell from it.

(3) For the purposes of this article the owner of a vehicle is taken to be the person by whom the vehicle is kept; and in determining for those purposes who was the owner of the vehicle at any time, it will be presumed (unless the contrary appears) that the owner was the person in whose name the vehicle was at that time registered under the Vehicles Excise and Registration Act 1994(22).

(4) A person who, wilfully and without lawful excuse—

(a) interferes with or removes the transport systems or any part of the them or the works connected with them;

(b) places or throws materials or objects of any kind on any part of the transport systems; or

(c) does anything which obstructs any rapid transit vehicle or harbour railway vehicle using the transport systems, whether or not such obstruction endangers the lives of any person in that vehicle,

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

Traffic signs

39.—(1) The promoter may, for the purposes of, or in connection with the construction or operation of the transport systems, place or maintain traffic signs of a type prescribed by regulations made under section 64(1)(a) (general provisions as to traffic signs) of the 1984 Act or of a character authorised by the Secretary of State on any street in which the transport systems are to operate or which gives access to such a street, or on any street in connection with any instrument made under article 40 (traffic regulation) or any other street as reasonably required for conveying information to traffic.

(2) The promoter—

(a) must consult with the traffic authority as to the placing of signs; and

(b) unless the traffic authority is unwilling to do so and subject to any directions given under section 65 (powers and duties of highway authorities as to placing of traffic signs) of the 1984 Act, must 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 includes a power to give directions to the promoter as to traffic signs under this article; and, accordingly, the powers conferred by paragraph (1) are 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 any street in which the transport

systems are operating or which gives access to such a street must consult with the promoter as to the placing of any traffic sign which would affect the operation of the transport systems.

(5) Rapid transit vehicles and harbour railway vehicles are taken to be public service vehicles for the purposes of section 122(2)(c) (exercise of functions by local authorities) of the 1984 Act.

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

Traffic regulation

40.—(1) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, which consent must not be unreasonably withheld, the promoter may, for the purposes of the transport systems—

- (a) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles in the manner specified in Part 1 of Schedule 8 (traffic regulation) on those roads specified in column (2) and along the lengths and between the points specified in columns (1) and (3) of that Part of that Schedule;
- (b) permit or prohibit vehicular access in the manner specified in Part 2 of Schedule 8 to those roads specified in column (2) and along the lengths, between the points and as respects direction to the extent specified in columns (1) and (3) of that Part of that Schedule;
- (c) create new bus lanes in the manner specified in Part 3 of Schedule 8 on those roads specified in column (2) and along the lengths, between the points and as respects direction to the extent specified in columns (1) and (3) and for the uses specified in column (4) of that Part of that Schedule; and
- (d) revoke any traffic regulation order under the 1984 Act in so far as it is inconsistent with any prohibition, restriction or other provision made by the undertaker under this paragraph.

(2) Without limitation on the scope of the specific powers conferred by paragraph (1) but subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, which consent must not be unreasonably withheld, the promoter may, in so far as may be necessary or expedient for the purposes of, in connection with, or in consequence of the construction, maintenance or operation of the transport systems—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;
- (c) authorise the use as a parking place of any road;
- (d) make provision as to the direction or priority of vehicular traffic on any road; and
- (e) permit or prohibit vehicular access to any road,

either at all times or at times, on days or during such periods as may be specified by the promoter.

(3) The powers in paragraphs (1) and (2) may be exercised at any time prior to the expiry of 12 months from the opening of the transport systems for public use but subject to paragraph (7) any prohibition, restriction or other provision made under paragraphs (1) or (2) may have effect both before and after the expiry of that period.

(4) The promoter must consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (5).

(5) The promoter must not exercise the powers conferred by paragraph (1) or (2) unless it has—

- (a) given not less than—

- (i) 12 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or
 - (ii) 4 weeks' notice in writing of its intention to do so in the case of a prohibition, restriction or other provision intended to have effect temporarily,to the chief officer of police and to the traffic authority in whose area the road is situated; and
 - (b) advertised its intention in such manner as the traffic authority may specify in writing within 28 days of its receipt of notice of the promoter's intention in the case of sub-paragraph (a) (i), or within 7 days of its receipt of notice of the promoter's intention in the case of sub-paragraph (a)(ii).
- (6) Any prohibition, restriction or other provision made by the promoter under paragraph (1) or (2)—
- (a) has effect as if duly made by, as the case may be—
 - (i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or
 - (ii) the local authority in whose area the road is situated, as an order under section 32 of the 1984 Act,and the instrument by which it is effected may specify savings and exemptions (in addition to those mentioned in Schedule 8) to which the prohibition, restriction or other provision is subject; and
 - (b) is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004(23) (road traffic contraventions subject to civil enforcement).
- (7) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the promoter from time to time by subsequent exercise of the powers of paragraph (2) within a period of 24 months from the opening of the transport systems for public use.
- (8) Before exercising the powers of paragraph (2) the promoter must consult such persons as it considers necessary and appropriate and must take into consideration any representations made to it by any such person.
- (9) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.
- (10) The powers conferred on the promoter by this article with respect to any road have effect subject to any agreement entered into by the promoter with any person with an interest in (or who undertakes activities in relation to) premises served by the road.

Power to lop trees overhanging transport systems

- 41.**—(1) The promoter may fell or lop any tree or shrub near any part of the transport systems, 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 transport systems or any apparatus used for the purposes of the transport systems; or
 - (b) from constituting a danger to passengers or other persons using the transport systems.
- (2) In exercising the powers conferred by paragraph (1), the promoter must not cause unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from the exercise of those powers.

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

Trespass on the transport systems

42.—(1) Any person who—

- (a) trespasses on any part of the transport systems which are not situated in a street; or
- (b) trespasses on any land of the promoter in dangerous proximity to the transport systems or to any electrical or other apparatus used for or in connection with the operation of the transport systems,

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

(2) No person is to be convicted of an offence under this article unless it is shown that a notice warning the public not to trespass upon the transport systems was clearly exhibited and maintained at the stop on the transport systems nearest the place where the offence is alleged to have been committed.

Power to make byelaws

43.—(1) The promoter may make byelaws regulating—

- (a) the use and operation of, and travel on, the transport systems;
- (b) the maintenance of safety and order on the transport systems, on any street along which the transport systems are to operate and on rapid transit system premises, harbour railway premises or other facilities provided in connection with the transport systems, where necessary to ensure the safe operation and use of the transport systems; and
- (c) the conduct of all persons, including employees of the promoter, while on rapid transit premises or harbour railway premises, or which could affect the safe operation and use of the transport systems.

(2) Without limitation on the scope of paragraph (1), byelaws made under this article may make provision—

- (a) with respect to tickets issued for travel on the transport systems (in whatever form), the payment of fares and charges and the evasion of payment of fares and charges;
- (b) with respect to interference with, or obstruction of, the operation of the transport systems or other facilities provided in connection with the transport systems;
- (c) with respect to access to, and the carriage, use or consumption of anything on, rapid transit premises or harbour railway premises;
- (d) with respect to the prevention of nuisances on rapid transit premises or harbour railway premises;
- (e) for regulating the passage of bicycles and other vehicles on ways and other places intended for the use of persons on foot within rapid transit premises or harbour railway premises;
- (f) for the safe custody and re-delivery or disposal of any property accidentally left on rapid transit premises or harbour railway premises and for fixing the charges made in respect of any such property; and
- (g) for prohibiting or restricting the placing or leaving of any vehicle without its driver on any part of the transport systems or on rapid transit premises or harbour railway premises.

(3) Byelaws made 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.

(4) Without affecting the taking of proceedings for an offence included in byelaws by virtue of paragraph (3), if the contravention of, or failure to comply with, any byelaw made under this article is attended with danger or annoyance to the public, or hindrance to the promoter in the operation of the transport systems, the promoter may immediately take action to obviate or remove the danger, annoyance or hindrance.

(5) Byelaws made under this article do not come into operation until they have been confirmed by the Secretary of State.

(6) At least 28 days before applying for any byelaws to be confirmed under this article, the promoter must 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 times 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.

(7) For at least 24 days before an application is made under this article for byelaws to be confirmed, a copy of the byelaws must—

- (a) be kept at the principal office of the promoter and must be open to public inspection without payment at all reasonable hours, and
- (b) be made available on the promoter's website (if any).

(8) The promoter must, at the request of any person, supply that person with a copy of any such byelaws on payment of such reasonable sum as the promoter may determine.

(9) 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 are to come into operation; and if no date is so fixed the byelaws come into operation after the expiry of 28 days after the date on which they were confirmed.

(10) The Secretary of State may charge the promoter such fees in respect of any byelaws submitted for confirmation under this article as the Secretary of State may consider appropriate for the purposes of defraying any administrative expenses incurred in connection with the confirmation of those byelaws.

(11) A copy of any byelaws when confirmed must be printed and deposited at the principal office of the promoter and must be open to public inspection without payment at all reasonable hours, and the promoter must, at the request of any person, supply that person with a copy of any such byelaws on payment of such reasonable sum as the promoter determines.

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

- (a) that the byelaws were made by the promoter;
- (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,

is rebuttable evidence of the facts stated in the certificate.

Power to contract for police services

44.—(1) The promoter may enter into any agreement with a police authority and its chief officer for the police force maintained by that authority to provide policing services for or in connection with the transport systems, including at any rapid transit premises or harbour railway premises.

(2) Any such agreement may provide for—

- (a) the promoter to make such payment or other consideration for those policing services as the parties may agree; and
 - (b) such incidental and ancillary matters as the parties consider appropriate.
- (3) In this article—
- (a) “chief officer” means a chief officer of police within the meaning of the Police Act 1996⁽²⁴⁾ or the Chief Constable of the British Transport Police Force; and
 - (b) “police authority” means a police authority within the meaning of that Act or the British Transport Police Authority within the meaning of the Railways and Transport Safety Act 2003⁽²⁵⁾.

Powers of disposal, agreements for operation, etc.

- 45.—(1) The promoter may, with the consent of the Secretary of State, enter into agreements—
- (a) to transfer, charge or otherwise dispose of to another person (“the transferee”) any interest of the promoter in the authorised works or the promoter’s right to construct, maintain, use or operate the authorised works; or
 - (b) to grant to another person (“the lessee”) for a period agreed between the promoter and the lessee any interest of the promoter in the authorised works or the promoter’s right to construct, maintain, use or operate the authorised works; and
 - (c) that are connected with or consequential on any agreement entered into under subparagraph (a) or (b).
- (2) Any agreement referred to in paragraph (1) may provide—
- (a) for any matters that are connected with the matters referred to in that paragraph or are consequential on them;
 - (b) for the financing or defraying of, or the making of contributions by the promoter or by any other person towards, the cost of constructing, maintaining, using or operating the authorised works; and
 - (c) for the transferee, the lessee or any other person to exercise, enjoy or be responsible for any related functions of the promoter, including its functions comprised in this Order, either exclusively or concurrently with the promoter or any other person.
- (3) Where an agreement has been made under paragraph (1), references in this Order to the promoter include references to the transferee, the lessee or any other person who may exercise, enjoy or be responsible for any related functions of the promoter under that agreement.
- (4) The exercise of the powers conferred by any enactment by any person in pursuance of any agreement made under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those powers were exercised by the promoter.
- (5) The promoter may provide to any person in any agreement made under paragraph (1), or in connection with or in consequence of any such agreement, or otherwise in connection with the design, construction, financing, maintenance, use or operation of the authorised works, such guarantees, indemnities or other forms of security as it considers to be necessary or appropriate.
- (6) In this article—
- (a) “functions” means statutory and other powers, duties, rights, interests and obligations; and
 - (b) references to the authorised works include references to any land held in connection with the authorised works.

⁽²⁴⁾ 1996 c. 16.

⁽²⁵⁾ 2003 c. 20.

Application of landlord and tenant law

46.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the transport systems or the right to operate the same; and
- (b) any agreement entered into by the promoter with any person for the construction, maintenance, use or operation of the transport systems, 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 affects the operation of any agreement to which this article applies.

(3) No such enactment or rule of law applies 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.

Registration of busway services and substitute road services

47.—(1) The promoter may provide, or secure the provision by other persons of, services for the carriage of passengers by road (“substitute services”) where the rapid transit system has been curtailed, discontinued or temporarily interrupted.

(2) The route, frequency and stopping places of any substitute service need not correspond with the route of the interrupted, curtailed or discontinued service.

(3) Section 6 of the Transport Act 1985(26) does not apply to any substitute services.

(4) For the purposes of the application of Part 1 of the Transport Act 1985, but subject to paragraphs (1) to (3), the authorised guided busway is a road within the meaning of section 137(1) of that Act.

PART 5

PENALTY FARES

Interpretation of Part 5

48.—(1) In this Part, unless the context otherwise requires—

“authorised person” means, in relation to any purpose, a person authorised for that purpose by the promoter;

“fare ticket” means a ticket authorising the person in respect of whom it is issued to travel on a rapid transit vehicle;

“general travel authority” means any permit, other than a fare ticket, authorising the person in respect of whom it is issued to travel on a rapid transit vehicle;

“passenger” means a person travelling on a rapid transit vehicle;

“penalty fare” means a penalty fare payable under article 50 (penalty fares);

“the penalty fare provisions” means articles 50 (penalty fares) to 55 (exclusion of double liability); and

“rapid transit vehicle stop” means a station or other regular stopping place on the rapid transit system at which passengers may get on or off rapid transit vehicles.

(2) Any reference in this Part to a passenger producing a fare ticket or general travel authority on being required to do so by an authorised person is a reference to producing, when so required, a fare ticket or general travel authority which, either by itself or together with any other document produced by the passenger at the same time, is valid for the journey made by the passenger.

(3) For the purposes of paragraph (2), a passenger who is on a rapid transit vehicle is taken to have made a journey ending at the next scheduled rapid transit stop.

Operation of Part 5

49.—(1) The penalty fare provisions have effect in relation to travel on any rapid transit vehicle on and after such day as the Secretary of State may specify.

(2) On the application of the promoter, or if the Secretary of State considers on reasonable grounds that the promoter is not complying with the requirements of this Part, the Secretary of State may provide that the penalty fare provisions cease to have effect on and after such day as the Secretary of State may specify.

(3) Paragraph (2) does not affect the power of the Secretary of State to specify further days on and after which the penalty fare provisions are to have effect.

(4) Any day specified by the Secretary of State for the purposes of paragraph (1) or (2) must be published in a newspaper circulating in the promoter’s area not later than one week before that date.

(5) No day may be specified under paragraph (1) except at the request of the promoter.

Penalty fares

50.—(1) If a passenger, on being required to do so by an authorised person, fails to produce a fare ticket or a general travel authority, the passenger is liable to pay a penalty fare if required to do so by an authorised person.

(2) A passenger is not liable to pay a penalty fare if, at any time when fare tickets are generally made available for sale at rapid transit stops or on rapid transit vehicles, there were no facilities for the sale of the necessary ticket for the passenger’s journey at the rapid transit stop where, and the time when, the passenger boarded the rapid transit vehicle, or on the rapid transit vehicle.

(3) Paragraphs (4) and (5) have effect with respect to the burden of proof, in any action for the recovery of a penalty fare under this article, so far as concerns the question whether the facts of the case fall within paragraph (2).

(4) In any case where the passenger has provided the authorised person with a relevant statement in due time it is for the authorised person to show that the facts of the case do not fall within paragraph (2), and in any other case it is for the passenger to show that the facts of the case fall within that provision.

(5) For the purposes of paragraph (4)—

(a) a relevant statement is a statement giving an explanation of the passenger’s failure to produce a fare ticket or general travel authority, together with any information as to the

passenger's journey relevant to that explanation (including, in every case, an indication of the rapid transit stop where the passenger boarded the rapid transit vehicle); and

- (b) a statement is provided in due time if it is provided when the passenger is required to produce a fare ticket or general travel authority, or at any later time before the expiration of the period of 21 days beginning with the day following the day on which the journey is completed.

Amount of penalty fare

51.—(1) Subject to paragraph (2), the penalty fare is £20 and is payable to the promoter before the expiration of the period of 21 days beginning with the day following the day on which the journey in respect of which it is payable is completed.

(2) The promoter may from time to time vary the amount of the penalty fare provided that—

- (a) the consent of the Secretary of State is obtained in writing to such a variation; and
- (b) a notice stating the amount of the penalty fare as so varied is published in a newspaper circulating in the promoter's area not later than 28 days before the day on which the penalty fare, as so varied, is to take effect.

Document to be issued in connection with penalty fare requirement

52.—(1) An authorised person who requires a passenger to pay a penalty fare must give the passenger either a receipt for the payment of the amount of the penalty (where the passenger makes that payment to the authorised person) or a notice stating that the requirement has been made.

(2) A receipt or notice given under paragraph (1) must specify the passenger's destination on the rapid transit vehicle on which the passenger is travelling when required to pay the penalty fare, and must operate as an authority to the passenger to continue to that destination.

(3) For the purposes of paragraph (2), the passenger's destination is (unless only one destination is possible in the circumstances) taken to be the destination stated by the passenger or, in default of any statement by the passenger identifying the passenger's destination, such destination as may be specified by the authorised person.

Notice of penalty fare provisions

53.—(1) It is the duty of the promoter to secure that a warning notice meeting the requirements of paragraph (2) is posted—

- (a) at every rapid transit stop, in such a position as to be readily visible to prospective passengers; and
- (b) in every rapid transit vehicle, in such a position as to be readily visible to passengers travelling on that rapid transit vehicle.

(2) A warning notice posted under paragraph (1) must (however expressed) indicate the circumstances (as provided in article 50 (penalty fares)) in which passengers may be liable to pay a penalty fare and state the amount of the penalty fare.

Supplementary provisions

54.—(1) Where a passenger is required to pay a penalty fare, unless that passenger pays it immediately and in cash when asked for it by an authorised person, that passenger must, if required to do so by an authorised person, give that authorised person, the name and address of the passenger; and any passenger failing to do so will be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(2) Where an authorised person requires any passenger to do anything under any provision of this Order the authorised person must, if so requested by the passenger concerned, produce to that passenger a duly authenticated document showing evidence of the authorised person's authority; and a requirement by an authorised person is of no effect if, as respects that requirement, the authorised person fails to comply with this paragraph.

Exclusion of double liability

55.—(1) Where a passenger has become liable to pay a penalty fare in respect of any journey (referred to below as “the relevant journey”), no proceedings may be brought against that passenger for either of the offences specified in paragraph (2) before the end of the period mentioned in article 51(1) (amount of penalty fare); and no such proceedings may be brought after the end of that period if—

- (a) the passenger has paid the penalty fare to the promoter before the end of that period; or
- (b) an action has been brought against the passenger for the recovery of that fare.

(2) The offences mentioned in paragraph (1) are—

- (a) any offence under byelaws made under article 43 (power to make byelaws) involving a failure to obtain or produce a fare ticket or general travel authority for the relevant journey; and
- (b) any offence under section 25(3) (regulation of conduct of passengers) of the Public Passenger Vehicles Act 1981⁽²⁷⁾ of contravening or failing to comply with any provision of regulations for the time being having effect by virtue of that section by failing to pay the fare properly payable for the relevant journey or any part of it.

(3) If proceedings are brought against any such passenger for any offence specified in paragraph (2) the liability to pay the penalty fare ceases and, if it has been paid, the promoter is liable to repay to the passenger an amount equal to the amount of that fare.

PART 6

PROTECTIVE PROVISIONS

Statutory undertakers, etc.

56. The provisions of Schedule 9 (provisions relating to statutory undertakers, etc.) have effect.

Minerals

57. Nothing in this Order affects the right of any person entitled to any mine or minerals of any description whatsoever under a street along which the transport systems are laid to work the mine or get the minerals; but this does not affect any liability (whether civil or criminal) of the person so entitled in respect of damage to the transport systems resulting from the exercise of any such right.

Saving for highway authorities

58. Nothing in this Order affects any power of a highway authority to widen, alter, divert or improve any highway along which the authorised transport systems are constructed.

(27) 1981 c. 14.

For protection of electricity, gas, water and sewerage undertakers

59. The provisions of Schedule 10 (for protection of electricity, gas, water and sewerage undertakers) have effect.

For protection of railway interests

60. The provisions of Schedule 11 (for protection of railway interests) have effect.

PART 7

MISCELLANEOUS AND GENERAL

Application of enactments

61.—(1) Any local enactment which makes provision in relation to any railway or former railway within the Order limits, including the Bristol Dock Act 1897(**28**) and the Great Western Railway (Bristol Lines) Act 1897(**29**), has effect subject to the provisions of this Order.

(2) Regardless of any local enactment which makes provision in relation to Prince Street Bridge or Ashton Avenue Bridge, neither bridge, except in the case of emergency, is to be swung open between 7.15am and 9.15am or 4.00pm and 6.00pm Mondays to Fridays and outside those times may be swung open no more than once per hour if in the opinion of the harbour authority this is reasonably required.

(3) Notwithstanding anything contained in section 12 of the Inclosure Act 1857(**30**) or the Commons Act 2006(**31**) or anything done (whether before or after the making of this Order) under Part 1 of, or Schedule 2 to, that Act, the promoter may exercise the powers conferred on it by this Order.

Disclosure of confidential information

62. A person who—

- (a) enters a manufactory, workshop or workplace in pursuance of the provisions of article 18 (safeguarding works to buildings) or article 20 (power to survey and investigate land, etc.); and
- (b) discloses to any person any information obtained under paragraph (a) and relating to any manufacturing process or trade secret,

is 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 that person's performance of a duty in connection with the purposes for which the person was authorised to enter the land.

Defence to proceedings in respect of statutory nuisance

63.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(**32**) (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

(28) 1897 60 & 61 Vict. c. ciii.

(29) 1897 60 & 61 Vict. c. cxci.

(30) 1857 c. 31.

(31) 2006 c. 26.

(32) 1990 c. 43.

to be prejudicial to health or a nuisance) no order may be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows—

- (a) that the nuisance relates to premises used by the promoter 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⁽³³⁾; or
 - (b) that the nuisance is a consequence of the operation or maintenance of the transport systems and that it cannot reasonably be avoided.
- (2) The following provisions of the Control of Pollution Act 1974—
- (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),

do not apply where the consent relates to the use of premises by the promoter 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 do not affect any rule of common law having similar effect.

Certification of plans, etc.

64. The promoter must, as soon as practicable after the making of this Order, submit copies of the book of reference and the Order plans to the Secretary of State for certification that they are true copies of, respectively, the book of reference and the Order plans referred to in this Order; and a document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

65.—(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⁽³⁴⁾ as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person 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, the last known address of that person at the time of service.

⁽³³⁾ 1974 c. 40.

⁽³⁴⁾ 1978 c. 30.

(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 the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person 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) 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 is taken to be fulfilled only where the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission 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 the recipient requires a paper copy of all or any part of that notice or other document, the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic transmission given by a person may be revoked by that person 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) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

No double recovery

66. Compensation is not 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

67. Except where otherwise expressly provided for in this Order and 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) must 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

Martin Woods
Head of the Transport and Works Act Orders
Unit
Department for Transport

19th December 2013

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SCHEDULES

SCHEDULE 1

Articles 2(1) and 5

SCHEDULED WORKS

<i>(1)</i> <i>Number of Work</i>	<i>(2)</i> <i>Description of Work</i>
In North Somerset/the City of Bristol	
Work No.1A	A two-way guided busway 753 metres in length, together with an adjoining emergency and maintenance track, commencing at the Long Ashton Park and Ride site access road, running south-east across Longmoor Brook and then skirting the site of the proposed Ashton Vale football stadium, turning north-eastwards and running parallel to Colliter's Brook before crossing from the west to the east side of Colliter's Brook and terminating 50 metres north-east of the northern end of Silbury Road. This work includes new bridge works over Longmoor Brook and Colliter's Brook on which the busway will be carried and modifications to the Park and Ride site and access road.
Work No.1B	A two-way guided busway 502 metres in length, together with an adjoining emergency and maintenance track, commencing at the Long Ashton Park and Ride site access road and running south-east, crossing Longmoor Brook, continuing east across Ashton Fields and crossing Colliter's Brook before terminating 50 metres north-east of the northern end of Silbury Road. This work includes new bridge works over Longmoor Brook and Colliter's Brook on which the busway will be carried and modifications to the Park and Ride site and access road.
In the City of Bristol	
Work No.2	A two-way guided busway 847 metres in length commencing at the termination of Works Nos. 1A and 1B and running north-east, parallel to Colliter's Brook before turning north-west, crossing Colliter's Brook and following the line of the Portbury freight railway, crossing from the west to the east side of the railway around the Ashton Junction level crossing, passing under Ashton Road and terminating at the Winterstoke Underpass, together with an adjoining emergency and maintenance track commencing at the termination of Work Nos. 1A and 1B and terminating at a point where the busway crosses over Colliter's Brook. This work includes new bridge works over Colliter's Brook and over the Portbury freight railway on which the busway will be carried and associated realignments of the highway at Winterstoke Road and Ashton Vale Road.
Work No.3	A two-way guided busway 890 metres in length, commencing at the termination of Work No. 2 and running north-east along a disused railway corridor, passing under Brunel Way, crossing Ashton Avenue

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<i>(1)</i> <i>Number of Work</i>	<i>(2)</i> <i>Description of Work</i>
	bridge in single track configuration, turning east and rounding the A Bond building before terminating at a point opposite number 20 Avon Crescent, together with an adjoining emergency and maintenance track commencing at the termination of Work No. 2 and terminating at Ashton Avenue Bridge. This work includes new bridge works to strengthen and modify Ashton Avenue Bridge on which the busway will be carried.
Work No.4	A realignment of the Bristol Harbour Railway 141 metres in length commencing at a point 40 metres west of the termination of Work no. 3 and running on-street east along the New Cut for 141 metres.
Work No.5	A one-way (towards the city centre) guided busway and a realignment of the Bristol Harbour Railway 1280 metres in length commencing at the termination of Work No. 3 and running east between Cumberland Road and the New Cut, passing under Cumberland Road from its south to its north side and terminating at a point adjacent to the western boundary of the “Miranda Guinness” building. This work includes associated modifications to Avon Crescent and Cumberland Road and an adjoining footway and cycleway commencing at a point 80 metres west of the point Work No. 5 passes under Cumberland Road and terminating at the termination of Work No. 5.
Work No.5A	Works to widen the existing “Chocolate Path” (footpath FP 392) and associated strengthening works to the New Cut retaining wall commencing at a point 60 metres east of the commencement of Work No. 4 and extending eastwards along the Chocolate Path for 65 metres.
Work No.6	Works to the Museum of Bristol access road 300 metres in length commencing at the termination of Work No. 5 and terminating 10 metres north of the junction of the Museum of Bristol access road and Wapping Road, including the removal of the existing Bristol Harbour Railway and its relocation commencing at the termination of Work No. 5 and running on-street to a termination point on the north side of the Museum of Bristol access road 163 metres from its junction with Wapping Road, the widening of the carriageway and the provision of new footways together with associated improvements to the junction of the Museum of Bristol access road and Wapping Road.
Work No.7	A single track two-way guided busway and adjoining footway and cycleway together with associated modifications to Wapping Road and Prince Street totalling 100 metres in length commencing at the termination of Work No. 6, passing over Prince Street Bridge and terminating at a point 27 metres north of Prince Street Bridge. This work includes strengthening works to Prince Street Bridge.

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SCHEDULE 2

Articles 2(1), 5 and 23

ADDITIONAL LAND WHICH MAY BE ACQUIRED OR USED

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on the works and land plans</i>	<i>(3)</i> <i>Purpose for which land may be acquired or used</i>
In North Somerset		
Long Ashton Park and Ride	01A/02, 01A/03, 01B/02, 01B/03	Provision of park and ride site and interchange with rapid transit system
Land south-west of Long Ashton Park and Ride	01A/01, 02A/01, 01B/01, 02B/01	Provision of replacement public open space
In the City of Bristol		
Land west of the A Bond building	06/15, 06/16	Ecological and habitat protection

SCHEDULE 3

Article 7

STREETS SUBJECT TO ALTERATION OF LAYOUT

Key to Schedule 3

JA	Junction alterations
WS	Widening of street by setting back of kerb line
NS	Narrowing of street by setting forward of kerb line
FA	Footpath alterations

PART 1

HIGHWAYS SUBJECT TO ALTERATION OF LAYOUT

<i>(1)</i> <i>Street subject to alteration of layout</i>	<i>(2)</i> <i>Description of alteration</i>
In the City of Bristol	
Winterstoke Road/Ashton Gate Underpass	Narrowing of carriageway between NS1 and NS2 to accommodate guided busway bridge works
Winterstoke Road/Ashton Vale Road	Junction alterations between JA1 and JA2 to accommodate guided busway bridge works

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<i>(1)</i>	<i>(2)</i>
<i>Street subject to alteration of layout</i>	<i>Description of alteration</i>
Cumberland Road	Widening of carriageway between WS1 and WS2 to accommodate rapid transit bus lane and stops

PART 2

FOOTPATH SUBJECT TO ALTERATION OF LAYOUT

<i>(1)</i>	<i>(2)</i>
<i>Footpath subject to alteration of layout</i>	<i>Description of alteration</i>
In the City of Bristol	
Footpath No. 392	Widening and realignment between FA1 and FA2

SCHEDULE 4

Articles 10 and 11

STREETS TO BE STOPPED UP AND THE PROVISION OF SUBSTITUTES

Key to Schedule 4

NP	Creation of new footpath
PD	Footpath diversion
PS	Footpath stopping up

PART 1

FOOTPATHS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Footpath affected</i>	<i>Extent of stopping up</i>	<i>New footpath to be substituted</i>
In North Somerset/the City of Bristol		
Footpath No. 207	Path diversion between PD1 and PD2	New footpath between NP1 and NP2 (Work No. 1B only)
Footpath No. LA12/14	Path diversion between PD3 and PD4	New footpath between NP3 and NP4A (Work No. 1B only)
In the City of Bristol		
Footpath No. 424	Path diversion between PD5 and PD6	New footpath between NP5 and NP6 (Work No. 1A only)
In North Somerset		

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<i>(1)</i> <i>Footpath affected</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New footpath to be substituted</i>
Footpath No. LA12/14	Path diversion between PD3 and PD4	New footpath between NP3 and NP4 (Work No. 1A only)

PART 2

FOOTPATH FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Footpath to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>
In the City of Bristol Footpath No. 423	Stop up footpath between PS1 and PS2

PART 3

NEW FOOTPATHS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>New Footpath</i>
City of Bristol	Footpath from Ashton Avenue Bridge to Avon Crescent between NP7 and NP8
City of Bristol	Footpath from Ashton Avenue Bridge running behind the A Bond building and along the New Cut to the western end of FP392 between NP9 and NP10

SCHEDULE 5

Article 11

STREETS TO BE TEMPORARILY STOPPED UP

PART 1

HIGHWAYS TO BE TEMPORARILY STOPPED UP

Key to Schedule 5 Part 1

TS	Temporary stopping up of highway
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<i>(1)</i>	<i>(2)</i>
<i>Street affected</i>	<i>Extent of stopping up</i>
In the City of Bristol	
Ashton Vale Road	Between TS1 and TS2
Avon Crescent/Cumberland Road	Between TS3 and TS4
Brunel Lock Road	Between TS5 and TS6
McAdam Way	Between TS7 and TS8
Museum of Bristol access road	Between TS9 and TS10
Prince Street Bridge	Between TS11 and TS12

PART 2

FOOTPATHS TO BE TEMPORARILY STOPPED UP

Key to Schedule 5 Part 2

TS	Temporary stopping up of footpath
<i>(1)</i>	<i>(2)</i>
<i>Footpath Affected</i>	<i>Extent of stopping up</i>
In the City of Bristol	
Footpath No. 422	Between TS13 and TS14
Footpath No. 207	Between TS15 and TS16
Footpath No. 392	Between TS17 and TS18
Footpath No. 393	Between TS19 and TS20

SCHEDULE 6

Article 26

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

Compensation enactments

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

2.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973⁽³⁵⁾ has effect subject to the modifications set out in sub-paragraphs (2) and (3).

⁽³⁵⁾ 1973 c. 26.

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

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

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

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

Adaptation of the 1965 Act

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

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

(2) Without limitation on the scope of sub-paragraph (1), Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

4. For section 7 of the 1965 Act (measure of compensation in case of severance) there is substituted the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Act regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

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

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

- (a) a question of disputed compensation in respect of the purchase of the right would apart from this section fall to be determined by the Upper Tribunal (“the tribunal”); and

- (b) before the tribunal has determined that question, the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that interest, and—
 - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased without material detriment to that land; or
 - (ii) where that land consists of such a park or garden, that the right cannot be purchased without seriously affecting the amenity or convenience of the house to which that land belongs,

the Ashton Vale to Temple Meads and Bristol City Centre Rapid Transit Order 2013⁽³⁶⁾ (“the Order”), in relation to that person, ceases to authorise the purchase of the right and is deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is deemed to have been served in respect of that interest on such date as the tribunal directs.

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

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection affects any other power of the authority to withdraw the notice.”

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

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

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

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

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

⁽³⁶⁾ S.I. 2013/[]

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9. Section 22 of the 1965 Act (interests omitted from purchase) is modified so as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 7

Articles 2(1), 5, 20 and 28

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on the works and land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Scheduled work</i>
In the City of Bristol			
Land south-east of Long Ashton Park and Ride	02A/03	Flood mitigation works and construction working area	Work No. 1A
Private road, Cala Trading Estate	04A/19, 04B/19	Temporary access to trading estate during construction of works, construction working area	Work No. 2
Private road, Cala Trading Estate	04A/20, 04B/20	Temporary access to trading estate during construction of works	Work No. 2
Barons Close	04A/15, 04B/15	Temporary access to trading estate during construction of works	Work No. 2
Private road and hardstanding, Cala Trading Estate	05/15	Temporary access to trading estate during construction of works	Work No. 2
Ashton Road	05/20, 05/21	Temporary access to trading estate during construction of works	Work No. 2
Portbury freight railway line adjacent to Cala Trading Estate	04A/14, 04B/14, 05/08, 05/12, 05/13	Construction working area	Work No. 2
Land north of Silbury Road	04A/02, 04A/03, 04B/02, 04B/03	Construction working area	Work No. 2
Hardstanding and car park, Cala Trading Estate	04A/29, 04B/29, 05/01, 05/03, 05/05, 05/07	Construction working area	Work No. 2
Land west of South Bristol Trade Park	04A/21, 04A/23, 04B/21, 04B/23	Construction working area	Work No. 2

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<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on the works and land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Scheduled work</i>
Ashton Vale Road	05/14	Temporary access to trading estate during construction of works, construction working area	Work No. 2
River Avon (New Cut) and banks adjacent to Ashton Avenue Bridge	06/08, 06/09, 06/12, 06/13	Construction working area	Work No. 3
Avon Crescent	06/20	Access to construction compound	Work Nos. 1 to 7
Land to south of Cumberland Basin	07/01, 07/02, 07/03	Construction compound and access	Work Nos. 1 to 7
Land and buildings at Wapping Wharf site	09/04, 09/05, 09/06, 09/07	Construction compound	Work Nos. 1 to 7
Floating Harbour	09/15, 09/16	Construction working area, temporary pedestrian/cycle crossing	Work No. 7
Land west of Wapping Road	09/17	Construction working area, temporary pedestrian/cycle crossing	Work No. 7
Hardstanding at Merchants Quay	09/18	Construction working area, temporary pedestrian/cycle crossing	Work No. 7
Land west of Mud Dock	09/19	Construction working area, temporary pedestrian/cycle crossing	Work No. 7
Land and premises west of Prince Street	09/20, 09/21	Construction working area, temporary pedestrian/cycle crossing	Work No. 7
In North Somerset			
Land south of Long Ashton Park and Ride	01A/10, 02A/02	Flood mitigation works and construction working area	Work No. 1A

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SCHEDULE 8

Article 40

TRAFFIC REGULATION

PART 1

STOPPING, WAITING, LOADING OR UNLOADING

(1) No waiting at any time

<i>(1)</i> <i>Nos. on</i> <i>Order plans</i>	<i>(2)</i> <i>Road</i>	<i>(3)</i> <i>Extent</i>	<i>(4)</i> <i>Notes</i>
NW1-NW2	Avon Crescent north-east side	From a point 3 metres north-west of a point in line with the common boundary line of No. 18 and No. 19 Avon Crescent to its junction with Cumberland Road	To maintain vehicular flow
NW2-NW3	Cumberland Road both sides	From its junction with Avon Crescent to a point in line with the common boundary line of No. 81 Cumberland Road and No. 1 Cumberland Court	To maintain vehicular flow and accommodate new bus lane

(2) No loading at any time

<i>(1)</i> <i>Nos. on</i> <i>Order plans</i>	<i>(2)</i> <i>Road</i>	<i>(3)</i> <i>Extent</i>	<i>(4)</i> <i>Notes</i>
NL1-NL2	Avon Crescent north-east side	From a point 3 metres north-west of a point in line with the common boundary line of No. 18 and No. 19 Avon Crescent to a point in line with the south-eastern boundary line of No. 25 Avon Crescent	To maintain vehicular flow
NL2-NL3	Cumberland Road south side	From a point in line with the south-eastern boundary line of No. 25 Avon Crescent to a point 41 metres east of a point in line with the common boundary line of No. 121 and No. 122 Cumberland Road	To maintain vehicular flow and accommodate new bus lane

PART 2

VEHICULAR ACCESS

(3) Prohibition of driving

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
<i>Nos. on</i>	<i>Road</i>	<i>Extent</i>	<i>Notes</i>
<i>Order plans</i>			
P1-P2	Prince Street	From its junction with The Grove to its junction with Prince Street Bridge	Except buses, pedal cycles, police, ambulance and fire service vehicles
P2-P3	Prince Street Bridge	From its junction with Prince Street to its junction with Wapping Road	Except buses, pedal cycles, police, ambulance and fire service vehicles
P3-P4	Wapping Road	From its junction with Prince Street Bridge to its junction with Merchants Quay	Except buses, pedal cycles, police, ambulance and fire service vehicles

PART 3

BUS AND CYCLE LANES

(4) New bus and cycle lanes

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
<i>Nos. on</i>	<i>Road</i>	<i>Extent</i>	<i>Notes</i>
<i>Order plans</i>			
BL1-BL2	Cumberland Road south side	From a point 182 metres west of its junction with Mardyke Ferry Road in a westerly direction for a distance of 214 metres	Westbound bus lane for buses, pedal cycles, taxis, solo motorcycles, police, ambulance and fire service vehicles
BL3-BL4	Cumberland Road south side	From a point 41 metres east of a point in line with the common boundary line of No. 121 and No. 122 Cumberland Road in a westerly direction for a distance of 282 metres	Westbound bus lane for buses, pedal cycles, taxis, solo motorcycles, police, ambulance and fire service vehicles

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SCHEDULE 9

Articles 9, 10, 33 and 56

PROVISIONS RELATING TO STATUTORY UNDERTAKERS, ETC.

Apparatus of statutory undertakers, etc., on land acquired

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

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

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

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

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

is entitled to recover from the promoter compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewage disposal plant.

(5) The provisions of the 1990 Act mentioned in sub-paragraph (1), as applied by that sub-paragraph, do not have effect in relation to apparatus as respects which paragraph 2, or Part 3 of the 1991 Act, applies.

(6) In this paragraph—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003⁽³⁷⁾; and

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

Apparatus of statutory undertakers, etc., in stopped up streets

2.—(1) Where a street is stopped up under article 10 (construction of new and stopping up of existing streets) any statutory utility whose apparatus is under, in, upon, over, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this paragraph, as if this Order had not been made.

(37) 2003 c. 21.

(2) The promoter must give not less than 28 days' notice in writing of its intention to stop up any street under article 10 to any statutory utility whose apparatus is under, in, upon, over, along or across that street.

(3) Where notice under sub-paragraph (2) has been given, any statutory utility whose apparatus is under, in, upon, over, along or across the street may, where reasonably necessary for the efficient operation of the undertaking of the statutory utility and, if reasonably requested so to do by the promoter, must—

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

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

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

(5) If in the course of the execution of relocation works under sub-paragraph (3)—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions except where this has been solely due to using the nearest available type, capacity or dimension; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the promoter, or, in default of agreement, is not determined by arbitration to be necessary in consequence of the construction of the relocation works in order to ensure the continued efficient operation of the undertaking of the statutory utility, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the statutory utility by virtue of sub-paragraph (4) is to be reduced by the amount of that excess.

(6) For the purposes of sub-paragraph (5)—

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

(7) An amount which apart from this sub-paragraph would be payable to a statutory utility in respect of works by virtue of sub-paragraph (4) (and having regard, where relevant, to sub-paragraph (5)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the statutory utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit as calculated in accordance with the Code of

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Practice entitled “Measures Necessary where Apparatus is Affected by Major Works (Diversionary Works)” and dated June 1992 and approved by the Secretary of State on 30th June, 1992, as revised and re-issued from time to time.

(8) Sub-paragraphs (4) to (7) do not apply where the authorised works constitute major transport works for the purposes of Part 3 of the 1991 Act, but instead—

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

(9) In this paragraph—

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“relocation works” means works executed, or apparatus provided, under sub-paragraph (3); and

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in paragraph 1(6).

Railway, navigation and tramway undertakings

3.—(1) Subject to the following provisions of this paragraph, the powers under article 9 (power to execute street works) to break up or open a street are not exercisable where the street, not being a highway maintainable at public expense (within the meaning of the 1980 Act)—

- (a) is under the control or management of, or is maintainable by, railway or tramway undertakers or a navigation authority; or
- (b) forms part of a level crossing belonging to any such undertakers or to such an authority or to any other person,

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

(2) Sub-paragraph (1) does not apply to the carrying out under this Order of emergency works, within the meaning of Part 3 of the 1991 Act.

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

(4) In this paragraph “navigation authority” means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary, harbour or dock.

SCHEDULE 10

Article 59

FOR PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

Interpretation

1. In this Schedule—

“apparatus” means—

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- (a) in the case of a specified undertaker which is an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989) belonging to, or maintained by, that undertaker;
- (b) in the case of a specified undertaker which is a gas undertaker, mains, pipes or other apparatus belonging to, or maintained by, a gas transporter within the meaning of Part 1 of the Gas Act 1986⁽³⁸⁾ for the purposes of the transportation and storage of gas;
- (c) in the case of a specified undertaker which is a water undertaker, mains, pipes or other apparatus belonging to, or maintained by, the undertaker for the purposes of water supply;
- (d) in the case of a specified undertaker which is a sewerage undertaker—
 - (i) any drain or works vested in the undertaker under the Water Industry Act 1991⁽³⁹⁾; and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

and includes any structure in which apparatus is, or is to be, lodged or which gives, or will give, access to such apparatus;

“construction” includes execution, placing, altering, replacing, relaying and removal and, in its application to works which include or comprise any operation, means the carrying out of that operation;

“emergency works” has the same meaning as in section 52 of the 1991 Act;

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

“necessary alternative apparatus” means alternative apparatus adequate to enable a specified undertaker to fulfil its statutory or licensed functions in a manner no less efficient than previously;

“plans” includes sections, specifications and method statements;

“specified undertaker” means—

- (a) Bristol Water plc (company registration number 02662226), whose registered office is P.O. BOX 218, Bridgwater Road, Bristol, BS99 7AU;
- (b) Wessex Water Services Limited (company registration number 02366648), whose registered office is Wessex Water Operations Centre, Claverton Down Road, Claverton Down, Bath, BA2 7WW; and
- (c) Western Power Distribution (South West) plc (company registration number 02366894) whose registered office is Avonbank, Feeder Road, Bristol, Avon, BS2 0TB,

or any person succeeding any such company as a licence holder within the meaning of Part 1 of the Electricity Act 1989, a gas transporter within the meaning of Part 1 of the Gas Act 1986, a water undertaker within the meaning of the Water Industry Act 1991 or as a sewerage undertaker within the meaning of Part I of that Act, and “the specified undertaker” in relation to any apparatus means the specified undertaker to whom the apparatus belongs or by whom it is maintained; and

“specified work” means any of the authorised works which—

⁽³⁸⁾ 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995, c. 45, and was further amended by section 76 of the Utilities Act 2000, c. 27.

⁽³⁹⁾ 1991 c. 56.

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- (a) will or may be situated over or within 15 metres measured in any direction of, or may in any way adversely affect, any apparatus; or
- (b) wherever situated, imposes any load upon any sewer, the removal of which has not yet been required under paragraph 8.

Application of Schedule 9

2. Paragraphs 1(1) and 2 of Schedule 9 (provisions relating to statutory undertakers, etc.) do not apply in relation to a specified undertaker and paragraphs 1(3) and 1(4) of that Schedule have effect as if they referred to apparatus removed under this Schedule.

Apparatus in stopped up streets

3. Where any street is stopped up under article 10 (construction of new and stopping up of existing streets), any specified undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up, but nothing in this paragraph affects any right of the promoter or of the specified undertaker to require the removal of that apparatus under paragraph 8 or the power of the promoter to carry out works under paragraphs 20 to 29.

4. The promoter must give not less than 28 days' notice in writing of its intention to stop up any street under article 10 to any specified undertaker whose apparatus is in that street.

On-street apparatus

5. This Schedule does not apply to anything done or proposed to be done in relation to or affecting any apparatus in so far as the relations between the promoter and the specified undertaker are regulated by the provisions of Part 3 of the 1991 Act.

Acquisition of land

6. The promoter must not acquire any apparatus from a specified undertaker pursuant to this Order otherwise than by agreement, which must not be unreasonably withheld.

7. The promoter may in exercise of the powers conferred by this Order acquire or appropriate any land in which any apparatus is placed and, following the removal of such apparatus in accordance with the provisions of this Schedule, any rights in that land relating to that apparatus are extinguished but no apparatus is to be removed nor is any right of the specified undertaker to use, maintain or renew any apparatus to be extinguished until any necessary alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the specified undertaker.

Removal of apparatus

8. Paragraphs 9 to 12 apply where—
- (a) the promoter requires the removal of any apparatus for the purpose of constructing any of the authorised works and gives to the specified undertaker not less than 56 days' written notice of that requirement together with a plan of the proposed work and of the proposed position of the alternative apparatus to be provided or constructed; or
 - (b) in consequence of the exercise or proposed exercise of any of the powers conferred by this Order, the specified undertaker reasonably requires to remove any apparatus.
9. The promoter must, if it is practicable to do so, afford to the specified undertaker the necessary rights and facilities for the construction of any necessary alternative apparatus in other land which

is available for the purpose and which is held or used, or intended for use, by the promoter for the purpose of its undertaking under this Order or in which it has sufficient rights or interests and thereafter for the use, maintenance and renewal of such apparatus and, if the promoter is unable to obtain those rights and facilities, the specified undertaker, on receipt of a written notice to that effect from the promoter, must use its best endeavours to obtain the necessary rights and facilities.

10. The obligation imposed upon the specified undertaker by paragraph 9 does not extend to the exercise by the specified undertaker of any power to acquire any land or rights in land by a compulsory purchase order.

11. Any alternative apparatus to be constructed by the specified undertaker under paragraph 9 is to be constructed in such manner, and in such line or situation, as may be agreed between the specified undertaker and the promoter or, in default of agreement, determined by arbitration.

12. The specified undertaker, after the manner of construction and the line or situation of any necessary alternative apparatus have been agreed or determined and after the grant to or obtaining by the specified undertaker of any such facilities and rights as are referred to in paragraph 9, must proceed without unnecessary delay to construct and bring into operation the alternative apparatus and afterwards to remove any apparatus required by the promoter to be removed in accordance with paragraph 8.

Removal of apparatus and construction of alternative apparatus by the promoter

13. Paragraphs 14 to 16 apply to so much of the work necessary in connection with the construction of alternative apparatus, or the removal of apparatus required to be removed, as will take place in any land held or used, or intended for use, by the promoter for the purpose of its undertaking.

14. If the promoter gives notice in writing to the specified undertaker that it desires to carry out any part of any work to which this paragraph applies, such work, instead of being carried out by the specified undertaker, may be carried out by the promoter with the prior written consent of the specified undertaker (which must not be unreasonably withheld and is subject to any such conditions as are reasonable and proper to protect the apparatus) in accordance with plans and in a position agreed between the specified undertaker and the promoter or, in default of agreement, determined by arbitration, without unnecessary delay under the superintendence (if given) and to the reasonable satisfaction of the specified undertaker.

15. In carrying out any work under paragraph 14 the promoter must comply with all statutory obligations which would have been applicable had the works been carried out by the specified undertaker.

16. Nothing in paragraph 14 authorises the promoter to carry out the actual placing, erection, installation, bedding, packing, removal, connection or disconnection of any apparatus or, where the apparatus is laid in a trench, execute any filling around the apparatus within 600 millimetres (measured in any direction) of the apparatus.

Facilities and rights for alternative apparatus

17. Where, in accordance with the provisions of this Schedule, the promoter affords to the specified undertaker facilities and rights for the construction, use, maintenance and renewal in land of the promoter of alternative apparatus in substitution for apparatus to be removed, those facilities and rights may be granted upon such terms and conditions as may be agreed between the promoter and the specified undertaker or, in default of agreement, determined by arbitration.

18. In determining the terms and conditions mentioned in paragraph 17 in respect of alternative apparatus to be constructed across or along the authorised works the arbitrator must—

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- (a) give effect to all reasonable requirements of the promoter for ensuring the safety of the authorised works and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any such works; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the case, give effect to any terms and conditions applicable to the apparatus (if any) constructed across or along the authorised works for which the alternative apparatus is to be substituted and to any other reasonable requirements of the specified undertaker.

19. If the facilities and rights to be afforded by the promoter in respect of any alternative apparatus under paragraph 17 and the terms and conditions subject to which those facilities and rights are to be granted are, in the opinion of the arbitrator, more or less favourable on the whole to the specified undertaker than the facilities, rights, terms and conditions applying to the apparatus to be removed, the arbitrator must make such provision for the payment of compensation to or by the promoter by or to the specified undertaker in that respect as appears to the arbitrator to be reasonable having regard to all the circumstances of the case.

Retained apparatus: protection and plan approval

20. Not less than 56 days before commencing to construct or renew any specified work, the promoter must submit to the specified undertaker plans of the works.

21. In relation to a work which is a specified work because of its proximity to or effect on a sewer, the plans to be submitted to the specified undertaker under paragraph 20 must be detailed plans describing—

- (a) the exact position of the specified work;
- (b) the level at which it is proposed to be constructed or renewed;
- (c) the manner of its construction or renewal;
- (d) the position of all sewers within 15 metres of the specified work or upon which the specified work will impose a load; and
- (e) by way of detailed drawings, every alteration proposed to be made to any such sewer.

22. The promoter must not commence the construction or renewal of any specified work to which paragraph 20 applies until the specified undertaker has given written approval of the plans so submitted.

23. Any approval of the specified undertaker required under paragraph 22—

- (a) may be given subject to reasonable conditions for any purpose mentioned in paragraph 24;
- (b) must not be unreasonably withheld; and
- (c) is deemed to have been given if it is neither given nor refused within 56 days of the submission of plans for approval.

24. In relation to a work to which paragraph 21 applies, the specified undertaker may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its sewerage system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any sewer.

25. A specified work is to be constructed (and in the case of any temporary work removed) only in accordance with—

- (a) the approved plans (and, in the case of plans relating to sewers approved, deemed to have been approved or settled by arbitration, as amended from time to time by agreement between the promoter and the specified undertaker); and

- (b) all reasonable requirements made by the specified undertaker for the alteration, or otherwise for the protection, of the apparatus, or for securing access to it.

and an officer of the specified undertaker is entitled to watch and inspect the carrying out of the work.

26. If within 42 days after the submission to it of any plans under paragraph 20, in consequence of the works proposed by the promoter the specified undertaker reasonably requires the removal of any apparatus and gives written notice to the promoter of that requirement, the foregoing provisions of this Schedule have effect as if the removal of such apparatus had been required by the specified undertaker under paragraph 8.

27. Nothing in paragraph 20 or 26 precludes the promoter from submitting at any time, or from time to time, but in no case less than 28 days before commencing the construction of any specified work, a new plan in place of the plan previously submitted, in which case the provisions of those paragraphs apply to, and in respect of, such new plan except that the reference in paragraph 26 to 42 days is to be treated as a reference to 21 days.

28. The promoter is not required to comply with paragraph 20 in a case where it is necessary to carry out emergency works but, in such a case, it must give to the specified undertaker notice as soon as reasonably practicable, and a plan of the works as soon as reasonably practicable afterwards, and must comply with paragraph 25 so far as reasonably practicable in the circumstances.

29. Nothing in paragraph 28 entitles the promoter to carry out works to any apparatus but, upon receipt of notice from the promoter, the specified undertaker must proceed to carry out such works as may be required without unnecessary delay.

Co-operation

30. Where in consequence of the proposed construction of any of the authorised works, the promoter or a specified undertaker requires the removal of apparatus under paragraph 8 or a specified undertaker makes requirements for the protection or alteration of apparatus under paragraph 25, the promoter must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and each specified undertaker must use its best endeavours to co-operate with the promoter for that purpose.

Access

31. If in consequence of the exercise of the powers conferred by this Order the access to any apparatus is materially obstructed the promoter must provide such alternative means of access to such apparatus as will enable the specified undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

Expenses

32. Subject to the provisions of the following paragraphs of this Schedule, the promoter must repay to the specified undertaker the reasonable expenses incurred by the specified undertaker in, or in connection with—

- (a) the inspection, removal and relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus under any provision of this Schedule (including any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or exercise of statutory powers for such apparatus);
- (b) the cutting off of any apparatus from any other apparatus, or the making safe of any redundant apparatus in consequence of the exercise by the promoter of any power under this Order;

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- (c) the survey of any land, apparatus or works; the inspection and monitoring of works; or the installation or removal of any temporary works reasonably necessary in consequence of the exercise by the promoter of any power under this Order; and
- (d) any other work or thing rendered reasonably necessary in consequence of the exercise by the promoter of any such power;

within a reasonable time of being notified by the specified undertaker that it has incurred such expenses.

33. The value of any apparatus removed under the provisions of this Schedule is to be deducted from any sum payable under paragraph 32, that value being calculated after removal.

34. If in accordance with the provisions of this Schedule—

- (a) alternative apparatus of better type, or greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions, except where this has been solely due to using the nearest currently available type; or
- (b) apparatus (whether existing apparatus or alternative apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions, or the placing of apparatus at that depth, as the case may be, is not agreed by the promoter or, in default of agreement, is not determined by arbitration to be necessary having regard, among other things, to the nature of the authorised works, then, if such placing involves cost in the construction of works under paragraphs 9 to 12 exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this paragraph would be payable to the specified undertaker by virtue of paragraph 32 is to be reduced by the amount of that excess.

35. For the purposes of paragraph 34—

- (a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus except in a case where the apparatus as so extended serves a purpose (either additional to or instead of that served by the existing apparatus) which was not served by the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

36. An amount which apart from this paragraph would be payable to the specified undertaker in respect of works by virtue of paragraphs 32 to 35 must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the specified undertaker any financial benefit by deferment of the time for renewal of the apparatus or of the system of which it forms part in the ordinary course, be reduced by the amount which represents that benefit as calculated in accordance with the Code of Practice entitled “Measures Necessary where Apparatus is Affected by Major Works (Diversionary Works)” and dated June 1992 and approved by the Secretary of State on 30th June 1992, as revised and re-issued from time to time.

37. In any case where work is carried out by the promoter under paragraphs 14 to 16 and, if such work had been carried out by the specified undertaker, the repayment made to the specified undertaker under paragraph 32 would fall to be reduced in accordance with paragraphs 34 to 36, the specified undertaker must pay to the promoter such sum as represents the amount of that reduction.

Indemnity

38. If, by reason or in consequence of the construction, maintenance or failure of any of the authorised works, including any works carried out by the promoter in accordance with paragraph 14 or protective works required by a condition imposed under paragraph 23(a) or required under paragraph 25(b), or any subsidence resulting from any of those works, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or other property of the specified undertaker, or there is any interruption in any service provided by the specified undertaker, the promoter must repay the cost reasonably incurred by the specified undertaker in making good such damage, or restoring the supply, and must—

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

by reason or in consequence of any such damage or interruption; and the fact that any act or thing may have been done by the specified undertaker on behalf of the promoter or in accordance with plans approved by the specified undertaker or in accordance with any requirement of the specified undertaker or under its supervision does not, subject to paragraph 39, excuse the promoter from any liability under the provisions of this paragraph.

39. Nothing in paragraph 38 imposes any liability on the promoter with respect to any damage or interruption to the extent that such damage or interruption is attributable to the neglect or default of the specified undertaker, its officers, servants, contractors or other agents.

40. The specified undertaker must give to the promoter reasonable notice of any claim or demand under the provisions of paragraph 38 and no settlement or compromise of it is to be made without the prior consent of the promoter which must not be unreasonably withheld.

Exercise of safeguarding and survey powers

41. The promoter, so far as is reasonably practicable, must exercise the powers conferred by article 18 (safeguarding works to buildings) so as not to obstruct or render less convenient the access to any apparatus.

42. The promoter must not, in the exercise of the powers conferred by section 11(3) (powers of entry) of the 1965 Act, as applied by this Order, or by article 20 (power to survey and investigate land, etc.), make any trial holes which interfere with any apparatus without the consent of the specified undertaker (which must not be unreasonably withheld).

Arbitration

43. Any difference arising between the promoter and a specified undertaker under this Schedule (other than a difference as to its meaning or construction) is to be determined by arbitration in the manner provided by article 67 (arbitration) and in determining any difference under this Schedule the arbitrator may, if the arbitrator thinks fit, require the promoter to execute any temporary or other works so as to avoid, so far as may be reasonably possible, interference with the use of any apparatus.

Transfer of functions

44. The promoter must give notice to every specified undertaker if any of the functions of the promoter under this Order are transferred to another person in accordance with article 45 (powers of disposal, agreements for operation, etc.) and any such notice must be given within 14 days of any such transfer becoming effective and must describe or give (as appropriate)—

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- (a) the nature of the functions to be transferred;
- (b) the extent of that transfer;
- (c) the geographical area to which the transfer relates;
- (d) the name and address of the transferee; and
- (e) the effective date of the transfer.

45. The obligation to give notice under paragraph 44 to a successor in title to a specified undertaker named in paragraph 1 only applies to the extent that the promoter has been informed by notice in writing by that named undertaker, or by a successor in title to that named undertaker, as the case may be, of the name and address of that successor in title.

Notices

46. Any notice in writing to be given by the promoter to a specified undertaker under this Schedule is to be deemed effectively given if sent by recorded delivery or by registered letter addressed to the registered office of that specified undertaker.

SCHEDULE 11

Article 60

FOR PROTECTION OF RAILWAY INTERESTS

1. The following provisions of this Schedule have effect, unless otherwise agreed in writing between the promoter and Network Rail and, in the case of paragraph 15, any other person on whom rights or obligations are conferred by that paragraph.

2. In this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as amended from time to time, granted to Network Rail by the Secretary of State in exercise of powers under section 8 of the Railways Act 1993⁽⁴⁰⁾;

“Network Rail” means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006⁽⁴¹⁾) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail and

⁽⁴⁰⁾ 1993 c. 43.

⁽⁴¹⁾ 2006 c. 46.

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- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail for the purposes of such railway or works, apparatus or equipment; and

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

3.—(1) Where under this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval must not be unreasonably withheld or delayed and is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the promoter with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use its reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised works under this Order.

4.—(1) The promoter must not exercise the powers conferred by article 20 (power to survey and to investigate land, etc.) or the powers conferred by section 11(3) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The promoter must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The promoter must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, as applied by Schedule 9 (provisions relating to statutory undertakers, etc.) to this Order, in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The promoter must not under the powers conferred by this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent under this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions.

5.—(1) The promoter must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated his disapproval of those plans and the grounds of disapproval the promoter may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the promoter. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer is deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the promoter that Network Rail desires itself to construct any part of a specified work which in the opinion of

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the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the promoter desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the promoter in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the promoter.

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes are to be constructed by Network Rail or by the promoter, if Network Rail so desires, and such protective works are to be carried out at the expense of the promoter in either case without unnecessary delay and the promoter must not commence the construction of the specified works until the engineer has notified the promoter that the protective works have been completed to the engineer's reasonable satisfaction.

6.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic on it and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of a specified work, the promoter must, regardless of any such approval, make good such damage and pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Schedule imposes any liability on the promoter with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the promoter or its servants, contractors or agents.

7. The promoter must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

8. Network Rail must at all times afford reasonable facilities to the promoter and its agents for access to any works carried out by Network Rail under this Schedule during their construction and must supply the promoter with such information as it may reasonably require with regard to such works or the method of constructing them.

9.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the promoter reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the promoter must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the promoter, Network Rail gives notice to the promoter that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the promoter decides that part of the specified work is to be constructed, Network Rail is to assume construction of that part of the specified work and the promoter must, regardless of any such approval of a specified work under paragraph 5(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a) provide such details of the formula by which those sums have been calculated as the promoter may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving is to be set off against any sum payable by the promoter to Network Rail under this paragraph.

10. The promoter must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the promoter as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the promoter and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watchkeepers and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the reasonable opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

11.—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised works where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

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“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised works) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 5(1) for the relevant part of the authorised works giving rise to EMI (unless the promoter has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the promoter must in the design and construction of the authorised works take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the promoter’s compliance with sub-paragraph (3)—

- (a) the promoter must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the promoter all information in the possession of Network Rail reasonably requested by the promoter in respect of Network Rail’s apparatus identified under sub-paragraph (a); and
- (c) Network Rail must allow the promoter reasonable facilities for the inspection of Network Rail’s apparatus identified under sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail’s apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of their execution may be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(1) has effect subject to this sub-paragraph.

(6) If at any time prior to the commencement of regular revenue-earning operations on the busway comprised in the authorised works and regardless of any measures adopted under sub-paragraph (3), the testing or commissioning of the authorised works causes EMI then the promoter must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) cease to use (or procure the cessation of use of) the promoter’s apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail’s apparatus.

(7) In the event of EMI having occurred—

- (a) the promoter must afford reasonable facilities to Network Rail for access to the promoter’s apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the promoter for access to Network Rail’s apparatus in the investigation of such EMI; and
- (c) Network Rail must make available to the promoter any additional material information in its possession reasonably requested by the promoter in respect of Network Rail’s apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail’s apparatus under sub-paragraphs (5) or (6)—

- (a) Network Rail must allow the promoter reasonable facilities for the inspection of the relevant part of Network Rail’s apparatus; and

(b) any modifications to Network Rail's apparatus approved under those sub-paragraphs must be carried out and completed by the promoter in accordance with paragraph 6.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) is to apply to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 10(a) any modifications to Network Rail's apparatus under this paragraph are deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in 67 (arbitration) to the Institution of Civil Engineers is to be read as a reference to the Institution of Electrical Engineers.

12. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the promoter informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the promoter must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

13. The promoter must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

14. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the promoter, must be repaid by the promoter to Network Rail.

15.—(1) The promoter must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Schedule which may be occasioned to or reasonably incurred by Network Rail—

(a) by reason of the construction or maintenance of a specified work or the failure of such a work; or

(b) by reason of any act or omission of the promoter or of any person in its employ or of its contractors or others whilst engaged upon a specified work,

and the promoter must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission; and the fact that any act or thing may have been done by Network Rail on behalf of the promoter or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision does not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the promoter from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the promoter reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand is to be made without the prior consent of the promoter.

(3) The sums payable by the promoter under sub-paragraph (1) may include a sum equivalent to the relevant costs.

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(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs, in the event of default, is enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail’s railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

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

16. Network Rail must, on receipt of a request from the promoter, from time to time provide the promoter free of charge with written estimates of the costs, charges, expenses and other liabilities for which the promoter is or will become liable under this Schedule (including the amount of the relevant costs mentioned in paragraph 15) and with such information as may reasonably enable the promoter to assess the reasonableness of any such estimate or claim made or to be made under this Schedule (including any claim relating to those relevant costs).

17. In the assessment of any sums payable to Network Rail under this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the promoter under this Schedule or increasing the sums so payable.

18. The promoter and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the promoter of—

- (a) any railway property shown on the works and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

19. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

20. The promoter must no later than 28 days from the date that the plans submitted to the Secretary of State in accordance with article 64 (Certification of plans, etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Bristol City Council and North Somerset Council (referred to in this Order as the promoter) to construct and operate a guided bus rapid transit system in Bristol and North Somerset, comprising a predominantly guided corridor running from Long Ashton Park and Ride to Prince Street Bridge, an unguided on-street circular route around Bristol city centre (for which powers are not sought in this Order) and a realignment of the existing Bristol Harbour Railway and, for that purpose, compulsorily or by agreement, to acquire land and rights in land and to use land. It contains a number of protective provisions for the benefit of affected undertakings.

The Order also contains a number of ancillary and consequential provisions to provide for the construction, maintenance and operation of the rapid transit system.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 64 (certification of plans, etc.) of this Order, may be inspected free of charge during working hours at the offices of the Bristol City Council at City Hall, College Green, Bristol BS1 5TR and at the offices of North Somerset Council at Town Hall, Walliscote Grove Road, Weston-super-Mare BS23 1UJ.