STATUTORY INSTRUMENTS

2024 No. 1284

TRANSPORT AND WORKS, ENGLAND

TRANSPORT, ENGLAND

The Network Rail (Leeds to Micklefield Enhancements) Order 2024

Made - - - -	*27th November 2024*
Coming into force - -	*18th December 2024*

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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(**a**) for an Order under sections 1 and 5(**b**) of the Transport and Works Act 1992 ("the 1992 Act").

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

(**a**) S.I. 2006/1466 was amended by S.I. 2010/439, S.I. 2011/556, S.I. 2011/2085, S.I. 2012/147, S.I. 2012/1658, S.I. 2012/2590, S.I. 2013/755, S.I. 2014/469, S.I. 2015/627, S.I. 2015/1682, S.I. 2017/979 and S.I. 2017/1070, S.I. 2019/311 and S.I. 2023/424.

(**b**) 1992 c. 42. Section 1 was amended by paragraph 51 and 52 of Schedule 2 to the Planning Act 2008 (c. 29); Section 5 was amended by S.I. 2012/1659.

The Secretary of State, having considered the objections made and not withdrawn and the report of the person who held the inquiry, has determined to make an Order giving effect to the proposals comprised in the application with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

Notice of the Secretary of State's determination was published in the London Gazette on 3 October 2024.

The Secretary of State, in exercise of the powers conferred by sections 1 and 5 of, and paragraphs 1 to 5, 7, 8, 10, 11, 16 and 17 of Schedule 1 to, the 1992 Act, makes the following Order:

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Network Rail (Leeds to Micklefield Enhancements) Order 2024 and comes into force on 18th December 2024.

Interpretation

2.—(1) In this Order—

"the 1961 Act" means the Land Compensation Act 1961(**a**);

"the 1965 Act" means the Compulsory Purchase Act 1965(**b**);

"the 1980 Act" means the Highways Act 1980(**c**);

"the 1981 Act" means the Acquisition of Land Act 1981(**d**);

"the 1984 Act" means the Road Traffic Regulation Act 1984(**e**);

"the 1990 Act" means the Town and Country Planning Act 1990(**f**);

"the 1991 Act" means the New Roads and Street Works Act 1991(**g**);

"the 2003 Act" means the Communications Act 2003(**h**);

"the 2016 Regulations" means the Environmental Permitting (England and Wales) Regulations 2016(**i**);

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

"authorised works" means the scheduled works, all other works approved pursuant to section 90(2A) of the 1990 Act and any other works authorised by this Order, the planning permission and the Town and Country Planning (General Permitted Development) (England) Order 2015 including Part 18 of Schedule 2 to that Order or any part of them;

"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;

"bridleway" has the same meaning as in section 329 (further provision as to interpretation) of the 1980 Act;

(**a**) 1961 c. 33.
(**b**) 1965 c. 56.
(**c**) 1980 c. 66.
(**d**) 1981 c. 67.
(**e**) 1984 c. 27.
(**f**) 1990 c. 8.
(**g**) 1991 c. 22.
(**h**) 2003 c. 21.
(**i**) S.I. 2016/1154.

"building" includes any structure or erection or any part of a building, structure or erection;

"carriageway" has the same meaning as in section 329 (further provision as to interpretation) of the 1980 Act;

"cycle track" has the same meaning as in section 329(**a**) of the 1980 Act;

"the deposited plans" means the plans certified by the Secretary of State as the deposited plans for the purposes of this Order;

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

"electronic transmission" means a communication transmitted—

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

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

and in this definition "electronic communications network" has the same meaning as in section 32(1)(**b**) (meaning of electronic communications networks and services) of the 2003 Act;

"footpath" and "footway" have the same meanings as in section 329 of the 1980 Act;

"highway" and "highway authority" have the same meanings as in section 328 (meaning of "highway") and section 1 (highway authorities: general provision) of the 1980 Act;

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

"the limits of land to be acquired or used" means the limits of land to be acquired or used shown on the deposited plans;

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

"Network Rail" means Network Rail Infrastructure Limited (Company registration number 02904587) whose registered office is at Waterloo General Office, London, SE1 8SW;

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

"owner", in relation to land, has the same meaning as in section 7(**c**) (interpretation) of the 1981 Act;

"planning permission" means a planning permission granted pursuant to the applications submitted to Leeds City Council with reference 23/03522/FU and/or with planning reference 22/03144/FU or any variation or amendment or substitution thereto;

"rights" without prejudice to and in addition to article 2(1) includes restrictive covenants and in relation to decommissioned apparatus, the surrender of rights, release of liabilities and transfer of decommissioned apparatus;

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

"street" has the same meaning as in section 48 (streets, street works and undertakers) of the 1991 Act and includes part of a street;

"street authority", in relation to a street, has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act;

"the tribunal" means the Lands Chamber of the Upper Tribunal; and

"watercourse" includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain.

(**a**) The definition of "cycle track" has been amended by section 1(1) and (2) of the Cycle Tracks Act 1984 (c. 38) and paragraph 21(2) of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c. 54).

(**b**) Section 32(1) was amended by S.I. 2011/1210.

(**c**) The definition of "owner" was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34). There are other amendments to section 7 which are not relevant to this Order.

(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 above its surface.

(3) References in this Order to numbered plots are references to plot numbers on the deposited plans.

(4) All distances, directions and lengths referred to in this Order are approximate and distances between points on a scheduled work are taken to be measured along the scheduled work.

(5) References in this Order to points identified by letters, or letters and numbers are construed as references to points on the deposited plans.

(6) References in this Order to numbered works are references to the scheduled works as numbered in Schedule 1.

Incorporation of the Railway Clauses Acts

3.—(1) The following provisions of the Railways Clauses Consolidation Act 1845(**a**) are incorporated in this Order—

(a) section 58(**b**) (company to repair roads used by them), except for the words from "and if any question" to the end;

(b) section 61 (company to make sufficient approaches and fences to highways crossing on the level);

(c) section 68 (gates, bridges, &c.), except for the words from "Shall and" to "formation thereof" and from "together with all necessary gates" to "all necessary stiles";

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

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

(f) section 75(**c**) (penalty on persons omitting to fasten gates);

(g) section 77 (company not to be entitled to minerals);

(h) sections 78 to 85E(**d**) and Schedules 1 to 3 (minerals under railways);

(i) section 103(**e**) (penalty on passengers practising frauds on the company);

(j) section 105 (penalty for bringing dangerous goods on railway), except for the words from "and if any person" to "for every such offence"; and

(k) section 145(**f**) (penalties to be summarily recovered before two justices).

(2) Section 12 (as to expense of signals, watchmen, &c.) of the Railways Clauses Act 1863(**g**) is incorporated in this Order.

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

"the company" means Network Rail;

"goods" includes anything conveyed on the railway authorised to be constructed by this Order;

"lease" includes an agreement for a lease;

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

(**a**) 1845 c. 20.
(**b**) Section 58 was amended by section 46 of, and Part 3 of Schedule 7 to, the Justices of the Peace Act 1949 (c. 101).
(**c**) Section 75 was amended by section 49 of the Transport and Works Act 1992 (c. 42).
(**d**) Section 78 – 85E were substituted by section 15 of the Mines (Working Facilities and Support) Act 1923 (c. 20). Section 84, as substituted, was amended by Part 3 of Schedule 7 to the Justices of the Peace Act 1949 (c. 101) and section 46 of the Criminal Justice Act 1982 (c. 48). Section 85C was amended by section 17(2)(a) of the Interpretation Act 1978 (c. 30).
(**e**) Section 103 was amended by the Statute Law Revisions Act 1892 (c. 19), Part 3 of Schedule 7 to the Justices of the Peace Act 1949 and section 46 of the Criminal Justice Act 1982 (c. 48).
(**f**) Section 145 was amended by the Statute Law Revision Act 1892 and Part 2 of Schedule 12 to the Transport Act 1962 (c. 46).
(**g**) 1863 c. 92.

"the railway" means any railway authorised to be constructed by this Order and any other authorised works;

"the special Act" means this Order; and

"toll" includes any rate or charge or other payment payable under this Order or any other enactment for any passenger or goods conveyed on any railway authorised to be constructed by this Order.

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 treated for the purposes of Part 3 (street works in England and Wales) of the 1991 Act 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) (which defines what highway authority works are major highway works) of that Act; 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(**a**) (dual carriageways and roundabouts) of the 1980 Act.

(2) 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 (power to give directions as to timing of street works);

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

section 58 (restrictions on works following substantial road works); and

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

(3) The provisions of the 1991 Act mentioned in paragraph (4), together with other provisions of that Act, which apply in relation to the execution of street works, and any regulations made or code of practice issued or approved under those provisions, apply (with the necessary modifications) in relation to the temporary stopping up, temporary alteration or temporary diversion of a street by Network Rail under the powers conferred by article 11 (power to alter layout etc. of streets) and article 12 (temporary stopping up of streets) and to the carrying out of works under article 9 (power to execute street works), whether or not the stopping up, alteration or diversion, or the carrying out of such works, constitutes street works within the meaning of that Act.

(4) The provisions of the 1991 Act(c) referred to in paragraph (3) are—

section 54(**c**) (advance notice of certain works), subject to paragraph (5);

section 55(**d**) (notice of starting date of works), subject to paragraph (5);

section 57(**e**) (notice of emergency works);

section 59(**f**) (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 76 (liability for cost of temporary traffic regulation);

section 77 (liability for cost of use of alternative route); and

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(**a**) Section 64 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(2) of, and Schedule 9 to, the New Roads and Street Works Act 1991 (c. 22).
(**b**) Schedule 3A was inserted by section 52(2) of, and Schedule 4 to, the Traffic Management Act 2004 (c. 18).
(**c**) Section 54 was also amended by section 49(1) of the Traffic Management Act 2004.
(**d**) Section 55 was also amended by section 49(2) and 51(9) of the Traffic Management Act 2004.
(**e**) Section 57 was also amended by section 52(3) of the Traffic Management Act 2004.
(**f**) Section 59 was also amended by section 42 of the Traffic Management Act 2004.

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

(5) Sections 54 and 55 of the 1991 Act as applied by paragraph (3) 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.

(6) Nothing in article 14 (construction and maintenance of new or altered streets)—

(a) prejudices the operation of section 87 (prospectively maintainable highways) of the 1991 Act, and Network Rail is not by reason of any duty under that article to maintain a street, to be taken to be a 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 with regard to which the provisions of Part 3 of the 1991 Act apply.

Disapplication of legislative provisions

5. Sections 80(2)(b), 81 and 82 of the Building Act 1984(**a**) (which concern a local authority's power to serve notice about demolition) do not apply to the demolition of the whole or part of a building carried out in exercise of the powers under this Order and to which section 80 of the Building Act 1984 otherwise applies.

Application of local railway enactments

6.—(1) The following provisions of the Leeds and Selby Railway Act 1830(**b**) do not apply to any works executed under the powers conferred by this Order—

(a) section 5 (width of rails of railway); and

(b) section 10 (ascent of bridges for carrying public roads over railway).

PART 2

WORKS PROVISIONS

Principal powers

Power to construct and maintain works

7.—(1) Network Rail may construct and maintain the scheduled works.

(2) Subject to article 8 (power to deviate), the scheduled works may only be constructed in the lines or situations shown on the deposited plans and in accordance with the levels shown on the deposited sections.

(3) Network Rail may on the land specified in columns (1) and (2) of Schedule 2 (acquisition of certain lands for ancillary works) carry out and maintain any works specified in relation to that land in column (3) of that Schedule with all works as may be necessary or expedient in connection with those works.

(4) Network Rail may on land specified in columns (1) and (2) of Schedule 10 (acquisition of new rights only) carry out and maintain any works specified in relation to that land in column (3) of that Schedule with all works as may be necessary or expedient in connection with those works.

(5) Subject to paragraph (7), Network Rail 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**) 1984 c. 55.
(**b**) 1830 c. lix.

(a) construction of electrification works, electrical equipment, signalling and permanent way works;

(b) buildings, yards, machinery, plant, apparatus, track drainage works, fencing, platforms, platform shelters, and other works and conveniences;

(c) make, provide and maintain all such approaches, ramps, footbridges, subways, lifts, stairs, passages, shafts and stagings, means of access, roundabouts, turning places, footpaths, bridleways, cycle tracks, gates, including temporary means of access from a highway to adjoining land;

(d) embankments, cuttings, aprons, abutments, retaining walls, wing walls, ground anchors, rock anchors and culverts;

(e) works for the strengthening or alteration of viaducts and viaduct pile strengthening works;

(f) works for the strengthening, alteration or demolition of any building;

(g) works to alter or remove any structure erected upon any highway or adjoining land;

(h) works to alter the position of apparatus, including mains, sewers, drains, cables and street furniture;

(i) works to alter the course of, or otherwise interfere with, a watercourse other than a navigable watercourse;

(j) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the scheduled works; and

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

(6) Subject to paragraph (7), Network Rail may carry out such other works (of whatever nature) as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the authorised works.

(7) Paragraphs (5) and (6) only authorise the carrying out or maintenance of works outside the limits of deviation if such works are carried out on—

(a) land specified in columns (1) and (2) of Schedule 2 (acquisition of certain lands for ancillary works) for the purpose specified in relation to that land in column (3) of that Schedule;

(b) land specified in columns (1) and (2) of Schedule 10 (acquisition of new rights only) for the purposes specified in column (3) of that Schedule; or

(c) land specified in columns (1) and (2) of Schedule 12 (land of which temporary possession may be taken) for the purposes specified in column (3) of that Schedule relating to the authorised works specified in column (4) of that Schedule.

(8) Network Rail may, within the Order limits—

(a) carry out and maintain landscaping and other works to mitigate any adverse effects of the construction, maintenance and operation of the authorised works (other than works authorised by this paragraph); and

(b) carry out and maintain works for the benefit or protection of land affected by the authorised works (other than works authorised by this paragraph).

Power to deviate

8. In constructing or maintaining any of the scheduled works, Network Rail may—

(a) deviate laterally from the lines or situations shown on the deposited plans to the extent of the limits of deviation for that work; and

(b) deviate vertically from the levels shown on the deposited sections—

(i) to any extent upwards not exceeding 3 metres; or

(ii) to any extent downwards as may be found to be necessary or convenient.

Power to execute street works

9.—(1) Network Rail may, for the purposes of the authorised works, enter upon so much of any of the streets specified in Schedule 3 (streets subject to street works) as are within the Order limits to the extent necessary and may—

(a) break up or open the street, or any sewer, drain or tunnel under it, or tunnel or bore under the street;

(b) place apparatus in the street;

(c) maintain apparatus in the street or change its position; and

(d) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b) and (c).

(2) This article is subject to paragraph 3 of Schedule 14 (provisions relating to statutory undertakers etc.).

(3) In this article "apparatus" has the same meaning as in Part 3 of the 1991 Act.

Stopping up of streets

10.—(1) Subject to the provisions of this article, Network Rail may, in connection with the carrying out of the authorised works, stop up each of the streets specified in columns (1) and (2) of Parts 1 and 2 of Schedule 4 (streets to be stopped up) to the extent specified in column (3) of Parts 1 and 2 of that Schedule.

(2) No street specified in columns (1) and (2) of Part 1 (streets for which a substitute is to be provided) of Schedule 4 is to be wholly or partly stopped up under this article unless—

(a) the new street to be constructed and substituted for it, which is specified in column (4) of that Part of that Schedule, has been constructed and completed to the reasonable satisfaction of the street authority and is open for use; or

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

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

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

(a) Network Rail is in possession of the land; or

(b) there is no right of access to the land from the street concerned; or

(c) there is reasonably convenient access to the land otherwise than from the street concerned; or

(d) the owners and occupiers of the land have agreed to the stopping up.

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

(a) all rights of way over or along the street so stopped up are extinguished; and

(b) Network Rail may appropriate and use for the purpose of its railway undertaking so much of the site of the street as is bounded on both sides by land owned by Network Rail.

(6) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, as if it were a dispute under Part 1 of the 1961 Act.

(7) This article is subject to paragraph 2 of Schedule 14 (provisions relating to statutory undertakers etc.).

(8) Paragraphs (8) to (15) of article 17 (replacement closure of level crossings) which provide for creation of new public rights of way apply in relation to any replacement footpath or bridleway specified in column (4) of Part 1 (streets for which a substitute is to be provided) of Schedule 4 as they apply to replacement rights of way specified in column (4) of Part 1 of Schedule 9 (accommodation crossings for which a substitute is to be provided).

Power to alter layout etc. of streets

11.—(1) Network Rail may for the purposes of the authorised works temporarily alter the access and/or layout of, and carry out other ancillary works in, the streets specified in columns (1) and (2) of Schedule 5 (streets subject to alteration of layout) in the manner specified in relation to that street in column (3).

(2) Without limiting the scope of the specific powers conferred by article 7 (power to construct and maintain works) or paragraph (1), but subject to paragraph (3), Network Rail may, for the purposes of constructing, maintaining or using the authorised works, alter the layout of any street within the Order limits and the layout of any street having a junction with such a street; and, without limitation on the scope of that power, Network Rail may—

(a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;

(b) alter the level or increase the width of any such kerb, footpath, footway, cycle track or verge; and

(c) reduce the width of the carriageway of the street.

(3) Network Rail must restore to the reasonable satisfaction of the street authority any street which has been temporarily altered under this article.

(4) 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.

(5) If within 28 days of receiving an application for consent under paragraph (4) a street authority fails to notify Network Rail of its decision or refuses consent without giving any grounds for its refusal, that street authority is deemed to have granted consent.

(6) When making an application for consent under paragraph (4), Network Rail must notify the street authority of the effect of paragraph (5).

Temporary stopping up of streets

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

(a) divert the traffic from the street; and

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

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

(3) Network Rail must provide 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), Network Rail may exercise the powers conferred by this article in relation to the streets specified in columns (1) and (2) of Schedule 6 (streets to be temporarily stopped up) to the extent specified in column (3) of that Schedule or such streets as may otherwise fall within the Order Limits.

(5) Network Rail 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, as if it were a dispute under Part 1 of the 1961 Act.

(7) If within 28 days of receiving an application for consent under paragraph (5)(b) a street authority fails to notify Network Rail of its decision or refuses consent without giving any grounds for its refusal that street authority is deemed to have granted consent.

(8) When making an application for consent under paragraph (5)(b), Network Rail must notify the street authority of the effect of paragraph (7).

Access to works

13.—(1) Network Rail may, for the purposes of the authorised works—

(a) form and lay out means of access, or improve existing means of access, in the locations specified in columns (1) and (2) of Schedule 7 (access to works) at or about the points marked "A" on the deposited plans; and

(b) with the approval of the highway authority, form and lay out such other means of access, or improve existing means of access, at such locations within the Order limits as Network Rail reasonably requires for the purposes of the authorised works.

(2) If a highway authority fails to notify Network Rail of its decision within 28 days of receiving an application for approval, under paragraph (1)(b), the highway authority is deemed to have granted approval.

(3) When making an application for approval under paragraph (1)(b), Network Rail must notify the highway authority of the effect of paragraph (2).

Construction and maintenance of new or altered streets

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

(2) 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 in writing between Network Rail and the street authority, be maintained by and at the expense of Network Rail for a period of 12 months from its completion and from 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 or tunnel carrying a street over or under any railway of Network Rail and except as provided in those paragraphs Network Rail is not liable to maintain the surface of any street under or over which the scheduled works are constructed, or the immediate approaches to any street.

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

(e) where Network Rail 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 Network Rail 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 Network Rail 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.

Construction of bridges

15.—(1) Any bridge to be constructed under this Order for carrying a highway over or under a railway must be constructed in accordance with the plans and specifications approved by the highway authority, but such approval is not to be unreasonably withheld.

(2) If within 28 days of receiving an application for approval under paragraph (1) a highway authority fails to notify Network Rail of its decision or refuses approval without giving any grounds for its refusal that highway authority is deemed to have granted approval.

(3) When making an application for approval under paragraph (1), Network Rail must notify the highway authority of the effect of paragraph (2).

Agreements with street authorities

16.—(1) A street authority and Network Rail may enter into agreements with respect to—

(a) the construction of any new street (including any structure carrying the street over or under a railway) under the powers conferred by this Order;

(b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;

(c) the maintenance of the structure of any bridge constructed under the powers conferred by this Order;

(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(1) (power to execute street works).

(2) Such an agreement may, without limitation on the scope of paragraph (1)—

(a) make provision for the street authority to carry out any function under this Order which relates to the street in question; and

(b) contain such terms as to payment and otherwise as the parties consider appropriate.

Level Crossings

Replacement and closure of level crossings

17.—(1) Subject to paragraph (3), each of the level crossings specified in column (2) of Schedule 8 (replacement and closure of level crossings) are stopped up and discontinued.

(2) Subject to paragraph (3) and paragraph (2) of Schedule 14 (provisions relating to statutory undertakers etc.), upon the stopping up and discontinuance of a level crossing referred to in

paragraph (1), any right of way (whether public or private) over the part of the level crossing specified in relation to it in column (3) of Schedule 8 is extinguished.

(3) Paragraphs (1) and (2) are not to take effect with respect to a footpath or bridleway specified in columns (2) and (3) of Schedule 8 until the replacement right of way specified in relation to it in column (4) of that Part of that Schedule has been provided to the reasonable satisfaction of the street authority and is open for use.

(4) On completion of the construction of the replacement right of way specified in column (4) of Schedule 8 Network Rail must submit a written request to the street authority for written confirmation that the replacement right of way has been provided to the reasonable satisfaction of the authority, and can be opened for use, and such confirmation must not be unreasonably withheld and must be given within 28 days of the street authority receiving a request under this paragraph.

(5) If the street authority fails to notify Network Rail in writing of a decision by the expiry of 28 days from receiving the request, the street authority is deemed to have provided confirmation.

(6) When making a request for confirmation under paragraph (4), Network Rail must notify the street authority of the effect of paragraph (5).

(7) If the street authority notifies Network Rail that confirmation cannot be provided under paragraph (4), the matter is to be determined in accordance with article 52 (arbitration).

(8) In providing the replacement right of way specified in column (4) of Schedule 8, Network Rail may within the Order limits erect barriers and signs and carry out or provide any ancillary works or conveniences, subject to the agreement of the highway authority which agreement must not be unreasonably withheld.

(9) Any person who suffers loss by the extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, as if it were a dispute under Part 1 of the 1961 Act.

(10) Any replacement footpath or bridleway specified in column (4) of Schedule 8 provided under this Order is to be a public footpath or bridleway and, subject to paragraphs (11) to (12), in relation to that replacement right of way, section 28(**a**) (compensation for loss caused by public path creation order) of the 1980 Act applies as if the replacement right of way had been created by a public path creation order.

(11) In its application by virtue of paragraph (10), section 28 of the 1980 Act has effect with the modifications mentioned in paragraphs (12) to (14).

(12) In subsection (1), for the words "the authority by whom the order was made" there are substituted the words "Network Rail Infrastructure Limited".

(13) For subsection (2), substitute—

> "(2) A claim for compensation under this section is to be made to Network Rail Infrastructure Limited in writing before the end of the period of 6 months beginning with the day on which the public right of way first becomes exercisable and is to be served on Network Rail Infrastructure Limited by delivering it at, or by sending it by pre-paid post to, the registered office of Network Rail Infrastructure Limited.".

(14) Omit subsection (3).

(15) For the purposes of paragraphs (10) to (14), in section 307(2) (disputes as to compensation which are to be determined by Upper Tribunal and related provisions) of the 1980 Act, as it applies to section 28 of the 1980 Act by virtue of section 307(1), for "the authority from whom the compensation in question is claimed" substitute "Network Rail Infrastructure Limited".

(**a**) Section 28 was amended by S.I. 2006/1177.

Accommodation crossings

18.—(1) Subject to paragraph (2) and regardless of anything in section 68 (gates, bridges, & c.) of the Railways Clauses Consolidation Act 1845(**a**) as incorporated in the Leeds and Selby Railway Act 1830 or any other enactment or instrument, all public or private rights of way (if any) across the railway by means of the accommodation facilities specified in columns (2) and (3) of Parts 1 and 2 Schedule 9 (accommodation crossings), are extinguished.

(2) Paragraph (1) does not take effect with respect to the extinguishment of the private rights of way by means of an accommodation facility specified in columns (2) and (3) of Part 1 (accommodation crossings for which a substitute is to be provided) of Schedule 9 until the accommodation facility specified in relation to it in column (4) of Part 1 of that Schedule has been provided.

(3) Any person who suffers loss by the extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, as if it were a dispute under Part 1 of the 1961 Act.

Supplemental powers

Discharge of water

19.—(1) Subject to paragraphs (3) and (4), Network Rail may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction, operation or maintenance of the authorised works and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

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

(3) Network Rail 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) Network Rail 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) Network Rail 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) Network Rail 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) (requirement for environmental permit) of the 2016 Regulations(**c**).

(8) If a person who receives an application for consent or approval fails to notify Network Rail of a decision within 28 days of receiving an application for consent under paragraph (3) or an application for approval under paragraph (4)(a) that person is deemed to have granted consent or given approval, as the case may be.

(**a**) 1845 (8 & 9 Vict.) c. cv.

(**b**) 1991 c. 56. Section 106 was amended by sections 35(1), 35(8) and 43(2) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43), sections 36(2) and 99 of the Water Act 2003 (c. 37) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c. 29).

(**c**) S.I. 2016/1154 was amended by S.I. 2018/110.

(9) Where an application for consent or approval is made under paragraph (3) or paragraph (4)(a), Network Rail must notify that person of the effect of paragraph (8).

(10) 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 or a local authority; and

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

Protective works to buildings, roads and apparatus of a statutory undertaker

20.—(1) Subject to the following provisions of this article, Network Rail may at its own expense carry out such protective works to—

(a) any building; or

(b) any road; or

(c) any apparatus of a statutory undertaker,

lying within the Order limits or the protective works limits as Network Rail considers to be necessary or expedient.

(2) Protective works may be carried out—

(a) at any time before or during the construction in the vicinity of the building, road or apparatus of any part of the authorised works; or

(b) after the completion of the construction of that part of the authorised works in the vicinity of the building, road or apparatus 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 Network Rail may (subject to paragraph (5)) enter and survey any building, go onto and survey, any road or access and survey any apparatus falling within paragraph (1) and any land within the curtilage of the building or in which the apparatus is located.

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

(a) enter the building, go onto the road or access the apparatus and any land within the curtilage of the building or in which the apparatus is located; and

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

(5) Before exercising—

(a) a right under paragraph (1) to carry out protective works to a building, road or apparatus;

(b) a right under paragraph (3) to enter a building, go onto a road or access apparatus and land within the curtilage of the building or in which the apparatus is located;

(c) a right under paragraph (4)(a) to enter a building, go onto a road or access apparatus and land within the curtilage of the building or in which the apparatus is located; or

(d) a right under paragraph (4)(b) to enter land,

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

(**a**) 1991 c. 57.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land or the owner of the road or apparatus concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 52 (arbitration).

(7) Network Rail must compensate the owners and occupiers of any building or land or the owner of the road or apparatus 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) protective works are carried out under this article to a building, road or apparatus falling within paragraph (1); and

(b) within the period of 5 years beginning with the day on which the part of the authorised works constructed in the vicinity of the building, road or apparatus is first opened for use it appears that the protective works are inadequate to protect the building, road or apparatus against damage caused by the construction or operation of that part of the authorised works,

Network Rail must compensate the owners and occupiers of the building, road or apparatus for any loss or damage sustained by them.

(9) Without affecting article 51 (no double recovery) nothing in this article relieves Network Rail from any liability to pay compensation under section 10(2)(**a**) (further provision as to compensation for injurious affection) of the 1965 Act.

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

(11) In this article—

"protective works" in relation to a building, road or apparatus means—

(a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building, road or apparatus by the construction, maintenance or operation of the authorised works;

(b) any works the purpose of which is to remedy any damage which has been caused to the building, road or apparatus by the construction, maintenance or operation of the authorised works; and

(c) any works the purpose of which is to secure the safe operation of the authorised works or to prevent or minimise the risk of such operation being disrupted;

"road" includes any structure supporting the road.

Power to survey and investigate land

21.—(1) Network Rail may for the purposes of this Order—

(a) survey or investigate any land shown within the Order limits;

(b) without limitation on the scope of sub-paragraph (a), make excavations, trial holes and boreholes in such positions on the land as Network Rail thinks fit 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 ecological or archaeological investigations on such land;

(d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes or boreholes; and

(e) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (d).

(**a**) Section 10 was amended by section 4 of, and paragraph 13(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2009/1307.

(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) Notice given in accordance with paragraph (2) must include—

(a) a statement of the recipient's rights under paragraph (15); and

(b) a copy of any warrant issued under paragraph (7).

(4) If Network Rail proposes to do any of the following, the notice must include details of what is proposed—

(a) searching, boring or excavating;

(b) leaving apparatus on the land;

(c) taking samples;

(d) an aerial survey; and

(e) carrying out any other activities that may be required to facilitate compliance with the Conservation of Habitats and Species Regulations 2017(**a**).

(5) If Network Rail obtains a warrant after giving notice in accordance with paragraph (2) it must give a copy of the warrant to all those to whom it gave that notice.

(6) Any person entering land under this article on behalf of Network Rail—

(a) must, if so required, before or after entering the land produce written evidence of authority to do so including any warrant issued under paragraph (7);

(b) may not use force unless a justice of the peace has issued a warrant under paragraph (7) authorising the person to do so;

(c) 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;

(d) may only enter and survey at a reasonable time; and

(e) must, if the land is unoccupied or the occupier is absent from the land when the person enters it, leave it as secure against trespassers as when the person entered it.

(7) A justice of the peace may issue a warrant authorising a person to use force in the exercise of the power conferred by this article if satisfied—

(a) that another person has prevented or is likely to prevent the exercise of that power; and

(b) that it is reasonable to use force in the exercise of that power.

(8) The force that may be authorised by a warrant is limited to that which is reasonably necessary.

(9) A warrant authorising the person to use force must specify the number of occasions on which Network Rail can rely on the warrant when entering and surveying or valuing land.

(10) The number specified must be the number which the justice of the peace considers appropriate to achieve the purpose for which the entry and survey or valuation are required.

(11) Any evidence in proceedings for a warrant under this article must be given on oath.

(12) 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.

(13) If either a highway authority or a street authority which receives an application for consent fails to notify Network Rail of its decision within 14 days of receiving the application for consent—

(a) under paragraph (12)(a) in the case of a highway authority; or

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(**a**) S.I. 2017/1012.

(b) under paragraph (12)(b) in the case of a street authority,

that authority is deemed to have granted consent.

(14) Where an application for consent is made under paragraph (12)(a) or paragraph (12)(b), Network Rail must notify that authority of the effect of paragraph (13).

(15) Network Rail must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, as if it were a dispute under Part 1 of the 1961 Act.

(16) Nothing in this article overrides the need to obtain scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979(**a**).

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

22.—(1) Network Rail may acquire compulsorily—

(a) so much of the land shown on the deposited plans within the Order limits as land to be acquired compulsorily and described in the book of reference as may be required for the purposes of the authorised works; and

(b) so much of the land specified in columns (1) and (2) of Schedule 2 (acquisition of certain lands for ancillary works) (being land shown on the deposited plans and described in the book of reference) as may be required for the purpose specified in relation to that land in column (3) of that Schedule,

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

(2) This article is subject to article 25 (power to acquire new rights), article 26 (power to acquire subsoil or airspace only) and article 28 (temporary use of land for construction of works).

(3) This article does not apply to land specified in Schedule 13 (temporary use of land for access).

Application of Part 1 of the 1965 Act

23.—(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 1981 Act applies; and

(b) as if this Order were a compulsory purchase order under that Act.

(2) Part 1 of the 1965 Act, as applied by paragraph (1), has effect with the following modifications.

(3) Omit section 4 (time limit for giving notice to treat).

(4) In section 4A(1)(**b**) (extension of time limit during challenge) for "section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase

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(**a**) 1979 c. 46.

(**b**) Section 4A was inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22) and amended by section 185(2)(b) of the Levelling-up and Regeneration Act 2023.

order) the applicable period for the purposes of section 4", substitute "section 22 of the Transport and Works Act 1992 (validity of orders under section 1 or 3), the five year period mentioned in article 33 (time limit for exercise of powers of acquisition) of the Network Rail (Leeds to Micklefield Enhancements) Order 2024".

(5) In section 11(1B)(**a**) (powers of entry) in a case where the notice to treat relates only to the acquisition of an easement or other right over land, for "3 months" substitute "1 month".

(6) In section 11A(**b**) (powers of entry: further notices of entry)—

(a) in subsection (1)(a), after "land" insert "under that provision"; and

(b) in subsection (2), after "land" insert "under that provision".

(7) In section 22(2) (interests omitted from purchase), for "section 4 of this Act" substitute "article 33 (time limit for exercise of powers of acquisition) of the Network Rail (Leeds to Micklefield Enhancements) Order 2024".

(8) In Schedule 2A(c) (counter-notice requiring purchase of land not in notice to treat)—

(a) for paragraphs 1(2) and 14(2) substitute—

"(2) But see articles 26(4) (power to acquire subsoil or airspace only) of the Network Rail (Leeds to Micklefield Enhancements) Order 2024, which excludes the acquisition of subsoil or airspace only from this Schedule"; and

(b) after paragraph 29, insert—

"PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 20 (protective works to buildings, roads and apparatus of a statutory undertaker), article 28 (temporary use of land for construction of works) or article 29 (temporary use of land for maintenance of works) or article 30 (temporary use of land for access) of the Network Rail (Leeds to Micklefield Enhancements) Order 2024.".

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

24.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(**c**) 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 5 (earliest date for execution of declaration), omit the words from ", and this subsection" to the end.

(4) Omit section 5A(**d**) (time limit for general vesting declaration).

(5) In section 5B(**e**) (extension of time limit during challenge) for "section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A" substitute "section 22 of the Transport and Works Act 1992 (validity of orders under section 1 or 3), the five year period mentioned in article 33 (time limit for exercise of powers of acquisition) of the Network Rail (Leeds to Micklefield Enhancements) Order 2024".

(**a**) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.
(**b**) Schedule 2A was inserted by paragraph 3 of Schedule 3 to the Housing and Planning Act 2016.
(**c**) 1981 c. 66.
(**d**) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016.
(**e**) Section 5B was inserted by section 202(2) of the Housing and Planning Act 2016.

(6) In section 6(1)(b)(**a**) (notices after execution of declaration), for "section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981" substitute "section 14A of the Transport and Works Act 1992".

(7) In section 7(1)(a)(**b**) (constructive notice to treat), omit "(as modified by section 4 of the Acquisition of Land Act 1981)".

(8) In Schedule A1(**c**) (counter-notice requiring purchase of land not in general vesting declaration) for paragraph 1(2) substitute—

> "(2) But see article 26(3) (power to acquire subsoil or airspace only) of the Network Rail (Leeds to Micklefield Enhancements Order 2024, which excludes acquisition with respect to the acquisition of subsoil or airspace only from this Schedule.".

(9) References to the 1965 Act are construed as references to that Act as applied to the acquisition of land under article 22 (power to acquire land) by article 23 (application of Part 1 of the 1965 Act).

Power to acquire new rights

25.—(1) Subject to paragraphs (4) and (5), Network Rail may acquire compulsorily such easements or other rights over any land which it is authorised to acquire under article 22 (power to acquire land) as may be required for any purpose for which that land may be acquired under that provision, by creating them as well as by acquiring easements or other rights already in existence.

(2) In the case of the land specified in columns (1) and (2) of Schedule 10 (acquisition of new rights only) Network Rail's powers of compulsory acquisition under article 22(1) are limited to the compulsory acquisition of such new rights over land as may be required for the purpose specified in relation to that land in column (3) of that Schedule.

(3) Without limitation on the scope of paragraph (1), the rights which may be acquired under that paragraph include the acquisition of rights over the land numbered 10-001, 10-002, 10-003 and 10-004 in the City of Leeds as shown on the deposited plans to provide a means of vehicular access for the benefit of the owners and occupiers of land affected by the closure of Garforth Moor Level Crossing, stopping up of Footpath Garforth 6 and extinguishment of rights;

(4) Subject to Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as substituted by paragraph 5(8) of Schedule 11 (modification of compensation and compulsory purchase enactments for creation of new rights) where Network Rail acquires a right over land Network Rail is not required to acquire a greater interest in that land.

(5) Schedule 11 (modification of compensation and compulsory purchase enactments for creation of new rights) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right.

(6) In any case where the acquisition of new rights under paragraph (1) or (2) is required for the purpose of diverting, replacing or protecting apparatus of an undertaker Network Rail may, with the consent of the Secretary of State, transfer the power to acquire such rights to the undertaker in question.

(7) The exercise by an undertaker of any power in accordance with a transfer under paragraph (6) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by Network Rail.

(8) In paragraphs (6) and (7) "undertaker" means—

(a) any person who is a statutory undertaker for the purposes of the 1990 Act; and

(b) any public communications provider within the meaning of section 151(1) of the 2003 Act.

(**a**) Section 6 was amended by paragraph 52(2) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c. 11) and paragraph 7 of Schedule 15 to the Housing and Planning Act 2016.
(**b**) Section 7 was amended by paragraph 3 of Schedule 18 to the Housing and Planning Act 2016.
(**c**) Schedule A1 was inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016.

Power to acquire subsoil or airspace only

26.—(1) Network Rail may acquire compulsorily so much of, or such rights in, the subsoil of or the airspace over the land referred to in article 22(1) (power to acquire land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where Network Rail acquires any part of, or rights in, the subsoil of or the airspace over land under paragraph (1), Network Rail is not required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraphs (1) or (2) in relation to subsoil or airspace only—

(a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;

(b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the Compulsory Purchase (Vesting Declarations) Act 1981; and

(c) section 153(4A) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

(4) Paragraphs (2) and (3) are to be disregarded where Network Rail acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory or airspace above a house, building or manufactory.

Rights under or over streets

27.—(1) Network Rail may enter upon and appropriate so much of the subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised works and may use the subsoil or airspace for those purposes or any other purpose ancillary to its railway undertaking.

(2) Subject to paragraph (4), the power under paragraph (1) may be exercised in relation to a street without Network Rail 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 Network Rail 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 to be determined, in case of dispute, as if it were a 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 onto the street.

(5) Compensation is not payable under paragraph (3) to any person who is an undertaker to whom section 85 (sharing of cost of necessary measures) 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) Network Rail may, in connection with the carrying out of the authorised works—

(a) enter upon and take temporary possession of—

(i) the land specified in columns (1) and (2) of Schedule 12 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the authorised works (or any of those works) specified in column (4) of that Schedule; and

(ii) subject to paragraph (12), any other land within the Order limits in respect of which no notice of entry has been served under section 11(**a**) (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4(**b**) (execution of declaration) of the Compulsory Purchase (Vesting Declarations) Act 1981;

(b) remove any buildings and vegetation from that land;

(c) construct temporary works (including the provision of means of access) and buildings on that land;

(d) temporarily occupy and use airspace for the purposes of the operation of a crane in connection with the construction of the authorised works; and

(e) construct any permanent works specified in relation to that land in column (3) of Schedule 12 or any other permanent mitigation works on that land.

(2) Not less than 14 days before entering upon and taking temporary possession of land under this article Network Rail must serve notice of the intended entry on the owners and occupiers of the land.

(3) Network Rail may not, without the agreement of the owners of the land, remain in possession of any land under this article—

(a) in the case of land specified in columns (1) and (2) of Schedule 12, after the end of the period of one year beginning with the date of completion of the work specified in relation to that land in column (4) of Schedule 12; or

(b) in the case of land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless Network Rail has, before 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.

(4) Before giving up possession of land of which temporary possession has been taken under this article, Network Rail must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land, but Network Rail is not required to—

(a) replace a building removed under this article;

(b) restore the land on which any works have been constructed under paragraph 1(e); or

(c) remove any ground strengthening works which have been placed in that land to facilitate construction of the authorised works.

(5) Network Rail 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.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined as if it were a dispute under Part 1 of the 1961 Act.

(7) Without affecting article 51 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2)(c) (further provisions as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5).

(8) The powers of compulsory acquisition of land conferred by this Order do not apply in relation to the land referred to in paragraph (1)(a)(i) except that Network Rail is not precluded

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(**a**) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.

(**b**) Section 4 was amended by section 184 and 185 of, and paragraph 1 and 2 of Schedule 18 to, the Housing and Planning Act 2016.

over any part of that land, from acquiring new rights under article 25(1) (power to acquire new rights).

(9) Where Network Rail takes possession of land under this article, Network Rail is not required to acquire the land or any interest in it.

(10) Section 13(**a**) (refusal to give possession to acquiring authority) 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 23(1) (application of Part 1 of the 1965 Act).

(11) Paragraph (1)(a)(ii) does not authorise Network Rail to take temporary possession of any land which it is not authorised to acquire under article 22 (power to acquire land).

(12) In this article "designated air-space" means so much of the air-space as is comprised in the air-space directly above the highest point of any building currently located on the land specified in paragraph (2).

(13) The provisions of the Neighbourhood Planning Act 2017(**b**), insofar as they relate to temporary use of land under this article, do not apply to anything done in connection with the authorised works or the exercise of any powers under this Order.

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, Network Rail may—

(a) enter upon and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the work or any ancillary works connected with it; 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 Network Rail 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 Network Rail must serve notice of the intended entry on the owners and occupiers of the land.

(4) Network Rail may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of 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, Network Rail must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) Network Rail 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 as if it were a dispute under Part 1 of the 1961 Act.

(8) Without affecting article 51 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2) (further provisions as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage arising from

(**a**) Section 13 was amended by sections 62(3) and 139 of, paragraphs 27 and 28 of Schedule 13, and Part 3 of Schedule 23, to the Tribunals Courts and Enforcement Act 2007 (c. 15).
(**b**) 2017 c. 20.

the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where Network Rail takes possession of land under this article, Network Rail is not required to acquire the land or any interest in it.

(10) Section 13 (refusal to give possession to acquiring authority) 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 23(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 use.

(12) The provisions of the Neighbourhood Planning Act 2017, insofar as they relate to temporary use of land under this article, do not apply to anything done in connection with the authorised works or the exercise of any powers under this Order.

Temporary use of land for access

30.—(1) Network Rail may use any land specified in Schedule 13 (temporary use of land for access) for the passage of persons or vehicles (with or without materials, plant and machinery) for the purpose of or in connection with the construction of the authorised works.

(2) The power under paragraph (1) is exercisable on giving at least 7 days' notice (or, where access is urgently required, such notice as is reasonably practicable) to the owners and occupiers of the land.

(3) But paragraph (2) does not require notice to be given in relation to land where notice under that paragraph has already been given in relation to that land.

(4) Network Rail must pay compensation to the owners and occupiers of the land to which paragraph (1) applies for any loss or damage arising from the exercise of the power conferred by that paragraph.

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

(6) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of article 23(1) (application of Part 1 of the 1965 Act).

(7) The provisions of the Neighbourhood Planning Act 2017, insofar as they relate to temporary use of land under this article, do not apply to anything done in connection with the authorised works or the exercise of any powers under this Order.

Compensation

Disregard of certain interests and improvements

31.—(1) In assessing the compensation payable to any person on the acquisition from that person of any 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.

Extinction or suspension of private rights of way

32.—(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 Network Rail, whether compulsorily or by agreement; or

(b) on the date of entry on the land by Network Rail under section 11(1)(**a**) (powers of entry) of the 1965 Act,

whichever is the sooner.

(2) Subject to the provisions of this article in respect of land owned by Network Rail and required for the purposes of this Order all private rights of way are extinguished on the appropriation of the land for any of those purposes by Network Rail.

(3) Subject to the provisions of this article, all private rights of way over land subject to the compulsory acquisition of rights or the imposition of restrictive or other covenants under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right or the burden of the restrictive or other covenant—

(a) as from the date of the acquisition of the right or the imposition of the restrictive or other covenant by Network Rail, whether compulsorily or by agreement; or

(b) on the date of entry on the land by Network Rail under section 11(1) of the 1965 Act in pursuance of the right or enforcement of the restrictive or other covenant,

whichever is the sooner.

(4) Subject to the provisions of this article all private rights of way over land of which Network Rail takes temporary possession under this Order are suspended and unenforceable for as long as Network Rail remains in lawful possession of the land.

(5) Subject to paragraph (7), 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, as if it were a dispute under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right of way to which section 271 (extinguishment of rights of statutory undertakers etc.) or 272(**b**) (extinguishment of rights of electronic communications code network operators) of the 1990 Act or paragraph 2 of Schedule 14 (provisions relating to statutory undertakers etc.) applies.

(7) Paragraphs (1) to (4) have effect subject to—

(a) any notice given by Network Rail before—

(i) the completion of the acquisition of;

(ii) Network Rail's appropriation of;

(iii) Network Rail's entry onto; or

(iv) Network Rail taking temporary possession of,

the land, 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 sub-paragraph (a) and before or after the coming into force of this Order) which makes

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(**a**) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measures 2006 (No. 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.

(**b**) Section 272 was amended by paragraph 103(1) and (2) of Schedule 17 to the Communications Act (c. 21).

reference to this article between Network Rail and the person in or to whom the right of way in question is vested or belongs.

(8) If any such agreement as is mentioned in sub-paragraph (7)(b) which is expressed to have effect also for the benefit of those deriving title from or under the person in or to whom the right of way in question is vested or belongs, is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

Time limit for exercise of powers of acquisition

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

(a) no notice to treat is to be served under Part 1 of the 1965 Act as applied to the acquisition of land by article 23 (application of Part 1 of the 1965 Act); and

(b) no declaration is to be executed under section 4 (execution of declaration) of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 24 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The powers conferred by article 28 (temporary use of land for construction of works) cease at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents Network Rail 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.

PART 4

MISCELLANEOUS AND GENERAL

Power to transfer undertaking

34.—(1) Subject to paragraph (4), Network Rail may—

(a) transfer to another person (the "transferee") its right to construct, maintain, use or operate the authorised works (or any part of them) and such related statutory rights and powers as may be agreed in writing between Network Rail and the transferee; or

(b) grant to another person (the "lessee") for a period agreed in writing between Network Rail and the lessee the right to construct, maintain, use or operate the authorised works (or any part of them) and such related statutory rights and powers as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to Network Rail, except in paragraph (1), include references to the transferee or lessee.

(3) The exercise by a person of the rights or powers conferred by any enactment by any person in pursuance of any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those rights or powers were exercised by Network Rail.

(4) The consent of the Secretary of State is required for the exercise of the powers of paragraph except where the transferee in relation to Work No. 2 and Work No. 6 is Northern Gas Networks Limited (or successor).

Defence to proceedings in respect of statutory nuisance

35.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisances) of the Environmental Protection Act 1990(**a**) in relation to a

(**a**) 1990 c. 43. Section 82 was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c. 40) and paragraph 6 of Schedule 17 to the Environment Act 1995 (c. 25).

nuisance falling within paragraph (g) of section 79(1)(**a**) (noise emitted from premises so as to be prejudicial to health or a nuisance) of that Act no order is to 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 Network Rail for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to authorised works and that the nuisance is attributable to the carrying out of authorised works which are being carried out in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61(**b**) (prior consent for work on construction sites) or section 65(**c**) (noise exceeding registered level), of the Control of Pollution Act 1974(**d**); or

(b) that the nuisance is a consequence of the operation of the authorised works and that it cannot reasonably be avoided.

(2) 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) of the Control of Pollution Act 1974 and section 65(8) of that Act (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 Network Rail for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works.

(3) In proceedings for an offence under section 80(4) (summary proceedings for statutory nuisances) of the Environmental Protection Act 1990 in respect of a statutory nuisance falling within section 79(1)(g) or (ga)(**e**) of that Act where the offence consists in contravening requirements imposed by virtue of section 80(1)(a) or (b)(**f**) of that Act, it is a defence to show that the nuisance—

(a) is a consequence of the construction, operation or maintenance of the authorised works; and

(b) cannot reasonably be avoided.

(4) The provisions of this article do not affect the application to the authorised works of section 122 (statutory authority as a defence to actions in nuisance, etc.) of the Railways Act 1993(**g**) or any rule of common law having similar effect.

Planning permission

36. Planning permission which is deemed by a direction under section 90(2A)(**h**) (development with government authorisation) 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) (cases in which land is to be treated as operational land) of that Act.

Power to lop trees overhanging the authorised works

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

(**a**) Section 79(1) was amended by section 2(2) of the Noise and Statutory Nuisance Act 1993, section 120 of, and paragraph 2(a) of Schedule 17 and paragraph 89(2) of Schedule 22 to, the Environment Act 1995, sections 101(2) and 102(2) of the Clean Neighbourhoods and Environment Act 2005 (c. 16) and sections 109(2), 110(2), 111(2) and 112(2)(a) of the Public Health etc. (Scotland) Act 2008 (asp. 5).

(**b**) Section 61 was amended by Schedule 7 to the Building Act 1984 (c. 55), paragraph 15(3) of Schedule 15 to the Environmental Protection Act 1990 (c. 43), Schedule 24 to the Environment Act 1995 and paragraph 10 of Schedule 6 to the Building (Scotland) Act 2003 (asp. 8).

(**c**) Section 65 was amended by paragraph 15(4) of Schedule 15 to the Environmental Protection Act 1990 and Schedule 24 to the Environment Act 1995

(**d**) 1974 c. 40. Section 61 was amended by Schedule 7 to the Buildings Act 1984 (c. 55), paragraph 15(3) of Schedule 15 to the Environment Protection Act 1990 (c. 43), Schedule 24 to the Environment Act 1995 and paragraph 10 of Schedule 6 to the Building (Scotland) Act 2008 (asp. 8).

(**e**) Section 79(1)(ga) was inserted by section 2(1) and (2)(b) of the Noise and Statutory Nuisance Act 1993.

(**f**) Section 80(1) was amended by section 86 of the Clean Neighbourhoods and Environment Act 2005.

(**g**) 1993 c. 43.

(**h**) Section 90(2A) was inserted by section 16(1) of the Transport and Works Act (c. 42).

(a) from obstructing or interfering with the construction, maintenance or operation of the authorised works or any apparatus used on the authorised works; or

(b) from constituting a danger to passengers or other persons using the authorised works.

(2) In exercising the powers conferred by paragraph (1), Network Rail 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 compensation, is to be determined as if it were a dispute under Part 1 of the 1961 Act.

Open space land

38.—(1) As from the date on which Network Rail enters onto the Open Space Land under section 11(1) (powers of entry) of the 1965 Act or section 8 (vesting, and right to enter and take possession) of the Compulsory Purchase (Vesting Declarations) Act 1981, the Open Space Land will be discharged from all rights, trusts and incidents to which it was previously subject.

(2) In this article "the Open Space Land" means the land numbered 2-001, 2-002, 2-003 and 2-004, and 7-010 and 7-016B in the City of Leeds as shown on the deposited plans and forming part of an open space within the meaning of section 19(1) of the 1981 Act which the Secretary of State has certified as not exceeding 209 square metres and that the giving in exchange of other land for the Open Space Land is unnecessary for the purposes of section 19(1) of the 1981 Act.

Power to operate and use railway

39.—(1) Network Rail may operate and use the railway and other authorised works as a system, or part of a system, of transport for the carriage of passengers and goods.

(2) Nothing in this Order, or in any enactment incorporated with or applied by this Order, affects the operation of Part 1 (the provision of railway services) of the Railways Act 1993(**a**).

Obstruction of construction of authorised works

40. Any person who, without reasonable excuse—

(a) obstructs any person acting under the authority of Network Rail in setting out the lines of the scheduled works or in constructing any authorised work; or

(b) interferes with, moves or removes any apparatus belonging to any person acting under the authority of Network Rail,

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

Traffic regulation

41.—(1) Subject to the provisions of this article, and the consent of the traffic authority in whose area the street concerned is situated, which consent must not be unreasonably withheld, Network Rail, may, insofar as maybe necessary or expedient for the purposes of, in connection with, or in consequence of the construction, maintenance or operation of the authorised works—

(a) make provision for a weight restriction on vehicles permitted to use the carriageway over the Austhorpe Lane Bridge in the City of Leeds in the County of West Yorkshire;

(b) revoke, amend or suspend in whole or in part any traffic regulation order made, or having effect as if made, under the 1984 Act;

(c) permit, prohibit or restrict the parking, stopping, waiting, loading or unloading of vehicles on any road;

(**a**) 1993 c. 43 as amended by the Transport Act 2000 (c. 38) and the Railways Act 2005 (c. 14).

(d) suspend or authorise the use as a parking place of any road;

(e) restrict the speed of vehicles along any road;

(f) make provision as to the direction or priority of vehicular traffic on any road; and

(g) 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 Network Rail.

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

(3) If within 28 days of receiving an application for consent under paragraph (1) a traffic authority fails to notify Network Rail of its decision or refuses consent without giving any grounds for its refusal that traffic authority is deemed to have granted consent.

(4) The powers conferred by paragraph (1) may only be exercised by Network Rail after it has consulted the chief officer of police and the traffic authority in whose area the road concerned is situated before complying with provisions of paragraph (5).

(5) Network Rail must not exercise the powers conferred by paragraph (1) 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 so to do 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 street 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 Network Rail's intention in the case of sub-paragraph (a)(i), or within 7 days of its receipt of notice of Network Rail's intention in the case of sub-paragraph (a)(ii).

(6) Any prohibition, restriction or other provision made by Network Rail under paragraph (1)—

(a) has effect as if duly made by, as the case may be—

(i) the traffic authority in whose area the street is situated, as a traffic regulation order under the 1984 Act; or

(ii) the local authority in whose area the street is situated, as an order under section 32 (power of local authorities to provide parking places) of the 1984 Act,

and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject; and

(b) be deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004(**a**).

(7) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by Network Rail from time to time by subsequent exercise of the powers conferred by paragraph (1) within a period of 24 months from the opening of the authorised works for public use.

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

(9) The powers conferred on Network Rail by this article with respect to any road have effect subject to any agreement entered into by Network Rail with any person with an interest in (or who undertakes activities in relation to) premises served by the road.

(**a**) 2004 c. 18.

Temporary Traffic Regulation

42.—(1) Subject to the provisions of this article Network Rail, may for the purposes of and during the construction of the authorised works and so far as may be necessary or expedient for the purposes of or in connection with construction of the authorised works, temporarily—

(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) suspend or 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 Network Rail.

(2) The powers conferred by paragraph (1) may only be exercised after Network Rail has consulted the chief officer of police and such other persons as it considers necessary and appropriate, after Network Rail has taken into consideration any representations made to it by any such person and after Network Rail has obtained the consent of the traffic authority in whose area the road concerned is situated (which must not be unreasonably withheld but may be given subject to reasonable conditions).

(3) Network Rail must not exercise the powers conferred by this article in relation to any road unless it has—

(a) given not less than 4 weeks' notice in writing of its intention so to do 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, within 7 days of its receipt of notice of Network Rail's intention specify in writing.

(4) Any prohibition, suspension or other provision made by Network Rail under paragraph (1) has effect as if duly made by, as the case may be—

(a) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or

(b) 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 9) to which the prohibition, restriction or other provision is subject.

(5) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by Network Rail from time to time by subsequent exercise of the powers of paragraph (1).

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

(7) The powers conferred on Network Rail by this article with respect to any road have effect subject to any agreement entered into by Network Rail with any person with an interest in (or who undertakes activities in relation to) premises served by the road.

Traffic signs

43.—(1) Network Rail may, for the purposes of, or in connection with, the construction or operation of, the authorised works, place or maintain traffic signs on any street within the Order limits or which gives access to such a street, or on any street in connection with any instrument made under article 41 (traffic regulation) or 42 (temporary traffic regulation) or any other street as reasonably required for conveying information to traffic.

(2) Network Rail—

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

(b) may subject to any directions given under section 65 (powers and duties of highway authorities as to placing of traffic signs) of the 1984 Act, enter into arrangements with the consent of the traffic authority for the traffic signs to be placed and maintained by the traffic authority, such consent not to be unreasonably withheld.

(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 Network Rail as to traffic signs under this article; and 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 referred to in paragraph (1) must consult with Network Rail as to the placing of any traffic signs which may affect the authorised works.

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

Removal of Human Remains

44.—(1) In this article, the specified "land" means the land within the Order limits or the limits of deviation.

(2) Before Network Rail carries out any development or works that will or may disturb any human remains in the specified land, it must remove those human remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.

(3) Before any such remains are removed from the specified land, Network Rail must give notice of the intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—

(a) publishing a notice once in each of 2 successive weeks in a newspaper circulating in the area of the authorised works; and

(b) displaying a notice in a conspicuous place on or near to the specified land.

(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3), the Authority must send a copy of the notice to Leeds City Council.

(5) At any time within 56 days after the first publication of a notice under paragraph (3), any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to Network Rail of that person's intention to undertake the removal of the remains.

(6) Where a person has given notice under paragraph (5), and the remains in question can be identified, that person may cause such remains to be—

(a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or

(b) removed to, and cremated in, any crematorium,

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to Network Rail a certificate for the purpose of enabling compliance with paragraph (11).

(7) If Network Rail is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question must be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who must remove the remains and as to the payment of the costs of the application.

(8) Network Rail must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(9) If—

(a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph is given to Network Rail in respect of any remains in the specified land;

(b) notice under paragraph (5) is given and no application is made under paragraph (7) within 56 days after the giving of the notice, but the person who gave the notice fails to remove the remains within a further period of 56 days;

(c) within 56 days after any order is made by the county court under paragraph (7) any person, other than Network Rail, specified in the order fails to remove the remains; or

(d) it is determined that the remains to which a notice under paragraph (5) relates cannot be identified,

subject to paragraph (10), Network Rail must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as Network Rail thinks suitable for the purpose; and, so far as possible, remains from individual graves must be re-interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(10) If Network Rail is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, Network Rail must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(11) On the re-interment or cremation of any remains under this article—

(a) a certificate of re-interment or cremation must be sent by Network Rail to the Registrar-General giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and

(b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) must be sent by Network Rail to Leeds City Council.

(12) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions that may be given by the Secretary of State.

(13) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

Use of private roads for construction and operation

45.—(1) Network Rail may use any private road within the Order limits for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of, or in connection with, the construction of the authorised works.

(2) Network Rail must compensate the person liable for the repair of a road to which paragraph applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred under paragraph (1).

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

Disclosure of confidential information

46. A person who—

(a) enters a factory, workshop or workplace under the provisions of article 20 (protective works to buildings, roads and apparatus of a statutory undertaker) or article 21 (power to survey and investigate land); and

(b) discloses to any person any information obtained as a result of that entry 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.

Statutory undertakers etc.

47. Schedule 14 (provisions relating to statutory undertakers etc.) has effect.

Protection of interests

48. Schedule 15 (protective provisions) has effect.

Certification of plans etc.

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

50.—(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 (references to service by post) of the Interpretation Act 1978(**a**) 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.

(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 where the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission either in writing or by electronic transmission.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that 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).

(**a**) 1978 c. 30.

(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

51. 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.

Arbitration

52. Any difference under any provision of this Order, unless otherwise provided for, 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 giving notice in writing to the other) by the President of the Institution of Civil Engineers.

Signed by authority of the Secretary of State for Transport

Natasha Kopala
Head of the Transport and Works Act Orders Unit
Department for Transport

27th November 2024

SCHEDULES

SCHEDULE 1

Article 2

SCHEDULED WORKS

In the County of West Yorkshire, City of Leeds—

Work No. 1 – Realignment of Austhorpe Lane Bridge commencing south of the junction between Austhorpe Road and Manston Lane 140 metres and terminating at point 150 metres south includes the demolition of the existing Austhorpe Lane HUL4 Overbridge 21 carrying Austhorpe Lane over the existing railway (Leeds to Micklefield) and demolition of pedestrian bridge 21A.

Work No. 2 – A diversion of a high pressure gas main commencing beneath a point 140 metres south of the junction between Austhorpe Road and Manston Lane and terminating beneath a point 250 metres south east of its commencement.

Work No. 3 – Reconstruction of Crashaw Wood Bridge HUL4/20 carrying Definitive Footpath LEEDS 124 over the existing railway (Leeds to Micklefield line) commencing at a point 170 metres south of the junction of Nanny Goat Lane (Definitive Bridleway LEEDS 123) and terminating at a point 100 metres south of its commencement.

Work No. 4 – New Barrowby Lane Bridge carrying Definitive Bridleway Barwick 10 and Definitive Footpath Garforth 5 over the existing railway (Leeds to Micklefield Railway) commencing at a point 800 metres west of Barwick Road and terminating at a point 220 metres

south from its commencement. Barrowby Lane Level Crossing and Barrowby Foot Level Crossing (P18-P19) will be extinguished and replaced with New Barrowby Lane Bridge.

Work No. 5 – Reconstruction Ridge Road Bridge HUL4/14 carrying the A656 over the existing railway (Leeds to Micklefield line) commencing at point 375 metres to the South of Church Lane, Micklefield and terminating at a point 76 metres to the south of its commencement.

Work No. 6 – A diversion of a high pressure gas main commencing beneath a point 50 metres West of Ridge Road (A656) and terminating beneath a point 206 metres south of is commencement.

SCHEDULE 2

Articles 7 and 22

ACQUISITION OF CERTAIN LANDS FOR ANCILLARY WORKS

(1) *Area*	*(2)* *Number of land shown on the deposited plans*	*(3)* *Purpose for which land may be acquired*
County of West Yorkshire, City of Leeds	2-001, 2-002, 2-003 and 2-004	Provision of railway infrastructure
	4-001, 4-003 and 4-004	Provision of permanent access for rail related purposes
	11-013	Demolition of Brady Farm bridge and extinguishment of rights
	12-014	Track Sectioning Cabin and ancillary infrastructure and works
	12-001, 12-002, 12-003, 12-004, 12-005, 12-006, 12-008	Improvements to Lower Peckfield Lane and to facilitate closure of Peckfield Level Crossing

SCHEDULE 3

Article 9

STREETS SUBJECT TO STREET WORKS

(1) *Area*	*(2)* *Streets subject to street works*
County of West Yorkshire, City of Leeds	Wykebeck Avenue Austhorpe Road Austhorpe Lane A6120 William Parkin Way Barrowby Lane Bridleway Leeds 125 Nanny Goat Lane Barrowby Lane Ridge Road, Micklefield Church Lane, Micklefield Phoenix Avenue Pit Lane

SCHEDULE 4

Article 10

STREETS TO BE STOPPED UP

PART 1

STREETS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

(1) *Area*	*(2)* *Street to be stopped up*	*(3)* *Extent of stopping up*	*(4)* *New street to be substituted*
County of West Yorkshire, City of Leeds	Austhorpe Lane and Austhorpe Road	Between P1 to P2	P1 Work. 1 and P2 (sheet 4)
	Definitive Footpath, Leeds 124	Between P1 to P2 (sheet 5)	Footpath between P1 Work No. 3 and P2 (sheet 5)
	Definitive Bridleway Barwick 10 and Definitive Bridleway Austhorpe 9	Between P1, P2, P3, P4 and P5 (sheet 6)	Bridleway P6, P7, P8, P9, P10, Work No. 4, P11, P12, P13, P14, P15, P16 and P17 (sheet 6)
	Definitive Footpath Garforth 6	Between P18, P19 and P20 (sheet 7)	Footpath between P6, P7, P8, P9, P10, Work No. 4, P11, P12, P13, P14, P15, P16 and P17 (sheet 6)
	Ridge Road, Micklefield	Between P1 to P2 (sheet 9)	P1, Work No. 5 and P2 (sheet 9)
	Definitive Bridleway Micklefield 8	Between P1, P2 and P3 (sheet 12)	Footpath between P1, P4, P5 and P6 (sheet 12)
	Definitive Footpath Micklefield 7	Between P1, P2, P3, P4 and P5	P5, P6, P7, P8 and P9

PART 2

STREETS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

(1) *Area*	*(2)* *Street to be stopped up*	*(3)* *Extent of stopping up*
County of West Yorkshire, City of Leeds	Definitive footpath Garforth 7	Between P21, P22 and P23 (sheet 7)

SCHEDULE 5

Article 11

STREETS SUBJECT TO ALTERATION OF LAYOUT

(1) *Area*	*(2)* *Street subject to alteration*	*(3)* *Description of alteration*

	of layout	
County of West Yorkshire, City of Leeds	William Parkin Way	Temporary kerb alignment, temporary removal of signs and temporary widening of access between points T5 and T6 (sheet 5)
	Manston Lane	Hedgerow removal, carriageway surfacing to temporarily widen access between points T3 and T4 (sheet 5)
	Barwick Road and Barrowby Lane	Temporary kerb realignment and temporary removal of sign to temporarily widen access between points T1 and T2 (sheet 7)
	Ridge Road	Temporary kerb realignment and temporary works to highway verge to create/widen access between points T6 and T7 (sheet 9)
	Church Lane, Micklefield	Temporary kerb realignment and temporary works to highway verge to widen access between points T4 and T5 (sheet 9)
	Barwick Road and Junction of Nanny Goat Lane	Temporary access works to create/widen access between points T3 to T4 (sheet 7)
	Ridge Road	Temporary kerb realignment and temporary works to highway verge to widen existing access between points T3 and T4 (sheet 10)
	Phoenix Avenue	Temporary kerb realignment and drop kerbs to create temporary access between points T1 and T2 (sheet 11)

SCHEDULE 6

Article 12

STREETS TO BE TEMPORARILY STOPPED UP

(1) *Area*	*(2)* *Street to be temporarily stopped up*	*(3)* *Extent of stopping up*
County of West Yorkshire, City of Leeds	Kirkgate	Between points T1 to T2 (sheet 1)
	Non-definitive footpath	Between points T14, T15 to T16 (sheet 1)
	Definitive footpath Leeds City Council 100 and Non-definitive footpath	Between points T17 to T18 (sheet 1)
	Wharfe Street	Between points T3 to T4

	(sheet 1)
High Court/Kirkgate/Duke Street/Crown Point Road	Between points T5 to T6 (sheet 1)
East Street/A61/Crown Point Road/Duke Street	Between points T7 to T8 (sheet 1)
Marsh Lane to Saxton Lane	Between points T9 to T10 (sheet 1)
Marsh Lane to Crown Point Road (including A61)	Between Points T11 to T12 (sheet 1)
Marsh Lane/Crown Point Road/Brussels Street	Point T12 to T13 (sheet 1)
Permissive footpath known as Pontefract Lane between Pontefract Lane and Halton Moor Road, away from carriageway, unsegregated Cycleways only 95a	Between points T2 to T4 (sheet 2)
Non Definitive Bridleway	Between points T1 to T3 (sheet 2)
Osmondthorpe Lane	Between points T1 to T2 (sheet 3)
Neville Garth to Osmondthorpe Lane	Between points T3 to T4 to T5 (sheet 3)
Wykebeck Avenue	Between points T6 to T7 (sheet 3)
Non-definitive footpath	Between points T8 to T9 (sheet 3)
Austhorpe Road	Within Order limits (sheet 4)
Austhorpe Lane	Within Order limits (sheet 4)
Railway Road	Within Order limits (sheet 4)
Definitive Footpath Leeds 124	Between points T1 to T2 (sheet 5)
New Bridleway Leeds 271	Between points T7 and T8 (sheet 5)
New Bridleway Leeds 125	Within Order limits (sheet 6)
Nanny Goat Lane	Within Order limits (sheet 5 and 6)
Definitive Footpath Sturton Grange 4	Between points T1 to T2 (sheet 8 and 9)
Definitive Footpath Sturton Grange 4 and Definitive Footpath Sturton Grange 3	Between points T2 to T3 to T8 (sheet 9)
Ridge Road	Within Order limits (sheet 9)
Definitive Footpath Micklefield 3	Between points T9 and T10 (sheet 9)
Phoenix Avenue	Within Order limits (sheet 11 and 12)
Definitive Footpath Sturton Grange 5	Between Points T1 to T2 (sheet 10)
Lower Peckfield Lane	Within Order limits (sheet 12)
Definitive Bridleway Micklefield 8	Within Order limits (sheet 12)
Definitive Footpath Micklefield 7	Between points T1 to T2 (sheet 13)

SCHEDULE 7

Article 13

ACCESS TO WORKS

(1) *Area*	*(2)* *Description of access*
County of West Yorkshire, City of Leeds	Wykebeck Avenue Austhorpe Road Newmarket Approach Austhorpe Lane Pit Lane Phoenix Avenue

SCHEDULE 8

Article 17

REPLACEMENT AND CLOSURE OF LEVEL CROSSINGS

(1) *Area*	*(2)* *Footpath level crossing to be discontinued*	*(3)* *Right of way to be stopped up*	*(4)* *New right of way or street to be substituted*
County of West Yorkshire, City of Leeds	Barrowby Lane Level Crossing	Definitive Bridleway Barwick 10 between P1 and P2 and Bridleway Austhorpe 9 between P3 and P4	Bridleway between P6, P7, P8, P9, P10 Work No.4 P11, P12, P13, P14, P15, P16, P17
	Barrowby Lane Foot Level Crossing	Definitive Footpath Garforth 6 between P18, P19 and P20	Footpath between P6, P7, P8, P9, P10, Work No. 4, P11, P12, P13, P14, P15, P16 and P17
	Peckfield Level Crossing	Definitive Footpath Micklefield 8 between P1, P2 and P3	Footpath between P1, P4, P5 and P6 (sheet 12)
	Highroyds Wood Level Crossing	Definitive Footpath Micklefield 7 between P1, P2, P3, P4 and P5	P5, P6, P7, P8 and P9 (sheet 13) (the diversion between points P5 and P6 is indicative with the final alignment subject to survey)

SCHEDULE 9

Articles 10 and 18

ACCOMMODATION CROSSINGS

PART 1

ACCOMMODATION CROSSINGS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

(1) *Area*	*(2)* *Accommodation facility to be discontinued*	*(3)* *Private right of way to be extinguished*	*(4)* *Accommodation facility to be substituted*
County of West Yorkshire, City of Leeds	Garforth Moor Level Crossing	Within the limits of deviation of 10-005	New right of access over 10-001, 10-002, 10-003 and 10-004 which for the avoidance of doubt includes the right to upgrade the existing access track and maintain it and right to park vehicles (limited to plot 10-003 only).

PART 2

ACCOMMODATION CROSSINGS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

(1) *Area*	*(2)* *Accommodation facility to be discontinued*	*(3)* *Private right of way to be extinguished*
County of West Yorkshire, City of Leeds	Brady Farm Bridge	Within the limits of deviation 11-013

SCHEDULE 10

Articles 7 and 25

ACQUISITION OF NEW RIGHTS ONLY

(1) *Area*	*(2)* *Number of land shown on the deposited plan*	*(3)* *Purpose for which rights may be acquired*
County of West Yorkshire, City of Leeds	10-001, 10-002, 10-003 and 10-004	Right of access on foot and for vehicles for the benefit of third parties including users of Garforth Bank Row Allotments

	which for the avoidance of doubt includes the right to upgrade the existing access track and maintain it and right to park vehicles (limited to plot 10-003 only)
12-014A	Right of access on foot and for vehicles including with machinery to access and maintain the authorised works
7-016 and 7-017A	Right to install a gas pipe in the subsoil including related apparatus at surface level and right of access on foot and for vehicles including with machinery to maintain such gas pipe and apparatus and such right shall be for the benefit of Northern Gas Networks Limited (including its successor).

SCHEDULE 11

Article 25

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 1961 Act has effect subject to the following modification set out in sub-paragraph (2).

(2) For section 5A(5A) (relevant valuation date) of the 1961 Act substitute—

"(5A) If—

(a) the acquiring authority enter on land for the purposes of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 11 to the Network Rail (Leeds to Micklefield Enhancements) Order 2024 ("the 2024 Order"));

(b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 11 to the 2024 Order) to acquire an interest in the land; and

(c) the acquiring authority enter on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land when it entered on that land for the purpose of exercising that right or enforcing that covenant.".

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

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5(3)—

(a) for the words "land is acquired or taken from" substitute "a right over land is purchased"; and

(b) for the words "acquired or taken from him" substitute "over which the right is exercisable".

Application of Part 1 of the 1965 Act

4. Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by article 23 (application of Part 1 of the 1965 Act) to the acquisition of land under article 22 (power to acquire land), applies to the compulsory acquisition of a right by the creation of a new right under article 25(1), 25(2) or 25(3) (power to acquire new rights)—

(a) with the modification specified in paragraph 5; and

(b) with such other modifications as may be necessary.

5.—(1) The modifications referred to in paragraph 4(a) are as follows.

(2) References in the 1965 Act to land are, in the appropriate contexts, 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.

(3) For section 7 (measure of compensation in the case of severance) of the 1965 Act substitute—

"**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.".

(4) 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.

(5) Section 11(**b**) (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right or restriction, as well as the notice of entry required by subsection (1) of that section (as it applies to a compulsory acquisition under article 22, it has power, exercisable in the equivalent circumstances and subject to the

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(**a**) 1973 c. 26.

(**b**) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.

equivalent conditions, to enter for the purpose of exercising that right; and sections 11A(**a**) (powers of entry: further notices of entry), 11B(**b**) (counter-notice requiring possession to be taken on specified date), 12(**c**) (penalty for unauthorised entry) and 13(**d**) refusal to give possession to acquiring authority of the 1965 Act are modified correspondingly.

(6) Section 20(c) (tenants at will etc.) of the 1965 Act 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.

(7) Section 22 (interests omitted from purchase) of the 1965 Act (as modified by article 23(7) 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.

(8) For Schedule 2A to the 1965 Act substitute—

"SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1.—(1) This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over the whole or part of a house, building or factory.

(2) But see articles 26(4) (power to acquire subsoil or airspace only of the Network Rail (Leeds to Micklefield Enhancements) Order 2024, which excludes acquisition of the acquisition of subsoil or airspace only from this Schedule.

2. In this Schedule "house" includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory ("the owner") may serve a counter-notice requiring the authority to purchase the owner's interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the authority must decide whether to—

(a) withdraw the notice to treat,

(b) accept the counter-notice, or

(c) refer the counter-notice to the Upper Tribunal.

(**a**) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.
(**b**) Section 11B was inserted by section 187(2) of the Housing and Planning Act 2016.
(**c**) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23) and paragraph 4 of Schedule 16 to the Housing and Planning Act 2016 (c. 22).
(**d**) Section 13 was amended by section 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to, the Tribunals Courts and Enforcement Act 2007 (c. 15).

6. The authority must serve notice of its decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served ("the decision period").

7. If the authority decides to refer the counter-notice to the Upper Tribunal it must do so within the decision period.

8. If the authority does not serve notice of a decision within the decision period it is to be treated as if it had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in the house, building or factory.

Determination by Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right would—

(a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or

(b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

(a) the effect of the acquisition of the right,

(b) the use to be made of the right proposed to be acquired, and

(c) if the right is proposed to be acquired for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the acquiring authority ought to be required to take.

13. If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal."

SCHEDULE 12

Articles 7 and 28

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

PART 1

LAND RELATING TO THE SCHEDULED WORKS

(1) *Area*	*(2)* *Number of land shown on the deposited plans*	*(3)* *Purpose for which temporary possession may be taken*	*(4)* *Authorised works*
County of West Yorkshire, City of Leeds	7-003A	Access for construction, temporary possession and temporary stopping up	Work No. 2
	7-006A, 7-014 and 7-017	Working site and access for construction	Works Nos. 1 and 2
	8-001, 8-002, 8-003, 8-003A, 8-004A, 8-005, 8-006, 8-007A, 8-009A and 8-010A	Working site and access for construction	Work No. 3
	9-001A, 9-005A, 9-005B, 9-005C, 9-005D, 9-005E, 9-007, 9-008, 9-008A, 9-009, 9-009B, 9-009C, 9-010, 9-013, 9-013A, 9-013B, 9-013C, 9-013D, 9-013E, 9-013F and 9-013G	Working site and access for construction	Work No.4
	11-001, 11-002, 11-003, 11-003A and 11-004	Working site and access for construction	Work No. 5
	11-005A and 11-012A	Working site and access for construction	Work Nos. 5 and 6
	11-017	Work site and access for construction	Work No. 6

PART 2

RELATING TO AUTHORISED WORKS (EXCLUDING SCHEDULED WORKS)

(1) *Area*	*(2)* *Number of land shown on the deposited plans*	*(3)* *Purpose for which temporary may be taken*
County of West Yorkshire, City of Leeds	1-005, 1-006, 1-007, 1-008, 1-009, 1-010, 1-011, 1-012, 1-013, 1-014, 1-015, 0-015A, 1-016, 1-017, 1-018, 1-018A, 1-019, 1-020, 1-021, 1-024, 1-025, 1-025A, 1-025B, 1-026, 1-027, 1-028, 1-029, 1-029A, 1-030, 1-031, 1-032, 1-033, 1-034,	Work site and access for construction

1-035, 1-036, 1-036A and 1-037	
1-022, 1-023, 1-038, 1-039, 1-040	Temporary possession and temporary stopping up
3-001, 3-007, 3-008, 3-009 and 3-011	Work site and access for construction
3-002, 3-003, 3-004, 3-005, 3-005A, 3-006, 3-010, 3-012, 3-013, 3-014, 3-015 and 3-016	Temporary possession and temporary stopping up
4-002 and 4-005	Temporary possession and temporary stopping up
5-001, 5-001A, 5-002, 5-003, 5-004, 5-005, 5-006, 5-007, 5-008 and 5-009	Work site and access for construction
6-001, 6-002, 6-003 and 6-004	Work site and access for construction
9-013G	Temporary possession and access for construction and for installation of gates
11-012A, 11-012B, 11-012C, 11-014, 11-015 and 11-016,	Work site and access for construction
12-007, 12-010, 12-011, 12-013 and 12-014B	Work site and access for construction
13-004, 13-005, 13-006, 13-007, 13-008, 13-010, 13-011	Work site and access for construction

SCHEDULE 13

Article 22 and 30

TEMPORARY USE OF LAND FOR ACCESS

(1) Area	*(2) Number of land shown on the deposited plans*
County of West Yorkshire, City of Leeds	1-001, 1-002, 1-003, 1-004, 13-001, 13-002, 13-003, 13-012 and 13-013

SCHEDULE 14

Articles 10, 17 and 47

PROVISIONS RELATING TO STATUTORY UNDERTAKERS ETC.

Apparatus of statutory undertakers etc. on land acquired

6.—(1) Sections 271 to 274(**a**) (extinguishment of rights of statutory undertakers etc.) of the 1990 Act apply in relation to any land acquired or appropriated by Network Rail under this Order subject to the following provisions of this paragraph; and all such other provisions of that Act as apply for the purposes of those provisions (including sections 275 to 278, which contain provisions consequential on the extinguishment of any rights under sections 271 and 272, and

(**a**) Sections 272 to 274 were amended by paragraph 103(1) and (2) of Schedule 17 to the Communications Act 2003 (c. 21).

sections 279(2) to (4), 280 and 282(**a**), 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 Network Rail 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 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 Network Rail compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer communicate with any other public sewer or with a private sewerage disposal plant.

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

(6) Nothing in this paragraph affects the provisions of any enactment or agreement regulating the relations between Network Rail and an undertaker in respect of any apparatus laid or erected in land belonging to Network Rail on the date on which the Order is made.

(7) In this paragraph—

"public communications provider" has the same meaning as in section 151(1) of the Communications Act 2003(**b**); and

"public utility undertaker" has the same meaning as in the 1980 Act(**c**).

Apparatus of statutory undertakers etc. in stopped up streets

7.—(1) Where a street is stopped up under article 10 (stopping up of streets), or article 17 (replacement and closure of level crossings) any statutory utility whose apparatus is under, in, upon, 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.

(2) Where a street is stopped up under articles 10, 12, 20 any statutory utility whose apparatus is under, in, upon, over, along or across the street may, and if reasonably requested to do so by Network Rail 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.

(**a**) Section 279(3) was amended by paragraphs 103(1) and (2), and section 280 was amended by paragraph 104, of Schedule 17 to the Communications Act 2003. Sections 280 and 282 were amended by S.I. 2009/1307.

(**b**) 2003 c. 21.

(**c**) The definition of "public utility undertakers" was amended by section 190(3) of, and part 1 of Schedule 27 to, the Water Act 1989 (c. 15) and section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c. 29).

(3) Subject to the following provisions of this paragraph, Network Rail 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 the relocation works required in consequence of the stopping up of the street; and

(b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

(4) If in the course of the execution of relocation works under sub-paragraph (2)—

(a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; 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 Network Rail, or, in default of agreement, is not determined by arbitration pursuant to article 52 (arbitration) to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this paragraph would be payable to the statutory utility by virtue of sub-paragraph (3) is to be reduced by the amount of that excess.

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

(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; 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.

(6) An amount which apart from this sub-paragraph would be payable to a statutory utility in respect of works by virtue of sub-paragraph (3) (and having regard, where relevant, to sub-paragraph (4)) 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.

(7) Sub-paragraphs (3) to (6) do not apply where the authorised works constitute major transport works for the purposes of Part 3 (street works in England and Wales) of the 1991 Act, but instead—

(a) the allowable costs of the relocation works are to be determined in accordance with section 85 (sharing of cost of necessary measures) of that Act and any regulations for the time being having effect under that section; and

(b) the allowable costs are to be borne by Network Rail and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) Nothing in this paragraph affects the provisions of any enactment or agreement regulating the relations between Network Rail and a statutory utility in respect of any apparatus laid or erected in land belonging to Network Rail on the date on which the Order is made.

(9) In this paragraph—

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

"relocation works" means work executed, or apparatus provided, under sub-paragraph (2); and

"statutory utility" means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in paragraph 1(7).

Railway and navigation undertakings

8.—(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) is under the control or management of, or is maintainable by, railway undertakers or a navigation authority except with the consent of the undertakers or authority.

(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.

(5) Nothing in this paragraph affects the provision of any enactment or agreement regulating the relations between Network Rail and a railway undertaker or a navigation authority in respect of any street to which sub-paragraph (1) applies which have effect on the date on which this Order is made.

SCHEDULE 15

Article 48

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF SPECIFIED UNDERTAKERS

1. For the protection of the undertakers referred to in this Part of this Schedule the following provisions have effect unless otherwise agreed in writing between Network Rail and the undertakers concerned.

2. The provisions of paragraph 1 of Schedule 14 (provisions relating to statutory undertakers etc.), in so far as they relate to the removal of apparatus, do not apply in relation to apparatus to which this Part of this Schedule applies.

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between Network Rail and the undertaker are regulated by the provisions of Part 3 of the 1991 Act.

4. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable the undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means—

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

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

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

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(**a**) 1989 c. 129.

(d) in the case of a sewerage undertaker—

(i) any drain or works vested in the undertaker under the Water Industry Act 1991; and

(ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4)(**a**) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104(**b**) (agreements to adopt sewer, drain or sewage disposal works, at a future date) 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 any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus,

"functions" includes powers and duties;

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

"undertaker" means—

(a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;

(b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(c);

(c) a water undertaker within the meaning of the Water Industry Act 1991; and

(d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

for the area of the authorised works, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

5. Without affecting any provision in this Order or anything shown on the deposited plans Network Rail must not acquire any apparatus other than by agreement.

6.—(1) If, in the exercise of the powers conferred by this Order, Network Rail acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of an undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the undertaker in question.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, Network Rail requires the removal of any apparatus placed in that land, it must give to the undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed.

(3) Any alternative apparatus to be constructed in land of Network Rail under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the undertaker in question and Network Rail within 21 days of the service of a notice under sub-paragraph (2) or in default of agreement settled by arbitration in accordance with article 52 (arbitration).

(4) In any case where alternative apparatus is to be provided or constructed under sub-paragraph (2), or if in consequence of the exercise of any of the powers conferred by this Order an undertaker reasonably needs to remove any of its apparatus, Network Rail must, subject to sub-paragraph (5), afford to the undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of Network Rail and for the subsequent maintenance of that apparatus.

(5) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of Network Rail, or Network Rail is unable to afford such facilities and rights as are mentioned in sub-paragraph (4) in the land in which the alternative apparatus or part of such

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(**a**) Section 102(4) was amended by paragraph 90 of the Schedule 7 to the Water Act 2014 (c. 21).

(**b**) Section 104 was amended by section 96(4) of the Water Act 2003 (c. 37), section 42(3) of the Flood and Water Management Act 2010 (c. 29) and section 11(1) and (2) of, and paragraph 91, to the Water Act 2014.

(**c**) 1986 c. 44.

apparatus is to be constructed, the undertaker in question must, on receipt of a written notice to that effect from Network Rail, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(6) The undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 52 (arbitration), and after the grant to the undertaker of any such facilities and rights as are referred to in sub-paragraph (4) or (5), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by Network Rail to be removed under the provisions of this Part of this Schedule.

(7) Without affecting anything in sub-paragraph (6), if Network Rail gives notice in writing to the undertaker in question that it desires itself to execute any work to which this sub-paragraph applies, that work, instead of being executed by the undertaker, must be executed by Network Rail without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the undertaker.

(8) Sub-paragraph (7) applies to any part of any work necessary in connection with construction of alternative apparatus, or the removal of apparatus required to be removed, as will take place in any land of Network Rail.

(9) Nothing in sub-paragraph (7) authorises Network Rail to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, Network Rail affords to an undertaker facilities and rights for the construction and maintenance in land of Network Rail of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between Network Rail and the undertaker in question or in default of agreement settled by arbitration in accordance with article 52 (arbitration).

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

(a) give effect to all reasonable requirements of Network Rail for ensuring the safety and efficient operation of the railway and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of Network Rail or the traffic on the railway; and

(b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or along the railway for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by Network Rail in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by Network Rail to that undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

8.—(1) Not less than 28 days before starting the execution of any of the authorised works that are near to, or will or may affect, any apparatus the removal of which has not been required by Network Rail under paragraph 6(2), Network Rail must submit to the undertaker in question a plan, section and description of the works to be executed.

(2) Those works are to be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and an officer of the undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by the undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description are submitted to it under sub-paragraph (1).

(4) If an undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by Network Rail, reasonably requires the removal of any apparatus and gives written notice to Network Rail of that requirement, paragraphs 1 to 7 apply as if the removal of the apparatus had been required by Network Rail under paragraph 6(2).

(5) Nothing in this paragraph precludes Network Rail from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) Network Rail is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

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

10.—(1) Subject to the following provisions of this paragraph, Network Rail must repay to an undertaker the reasonable expenses incurred by that undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 6(2).

(2) The value of any apparatus removed under the provisions of this Part of this Schedule is to be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; 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 those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by Network Rail or, in default of agreement, is not determined by arbitration in accordance with article 52 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the undertaker in question by virtue of sub-paragraph (1), is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to an undertaker in respect of works by virtue of sub-paragraph (1) 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 undertaker 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.

(6) Any dispute as to whether a financial benefit is conferred in accordance with sub-paragraph (5) or as to the amount of such financial benefit which cannot be agreed is to be determined in accordance with article 52 (arbitration).

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 6(2), 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 property of an undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any undertaker, Network Rail must—

(a) bear and pay the cost reasonably incurred by that undertaker in making good such damage or restoring the supply; and

(b) make reasonable compensation to that undertaker for any other expenses, loss, damages, penalty or costs incurred by the undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on Network Rail with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an undertaker, its officers, servants, contractors or agents.

(3) An undertaker must give Network Rail reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of Network Rail, which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

12. Nothing in this Part of this Schedule affects the provision of any enactment or agreement regulating the relations between Network Rail and an undertaker in respect of any apparatus laid or erected in land belonging to Network Rail on the date on which this Order is made.

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

13.—(1) For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between Network Rail and the operator.

(2) In this Part of this Schedule—

"electronic communications apparatus" has the same meaning as in the electronic communications code;

"the electronic communications code" has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(**a**);

"electronic communications code network" means—

(a) so much of an electronic communications network or infrastructure system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and

(b) an electronic communications network which the Secretary of State is providing or proposing to provide;

"electronic communications code operator" means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;

(**a**) See section 106.

"infrastructure system" has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7(2) of that code; and

"operator" means the operator of an electronic communications code network.

14.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised works or their construction, or of any subsidence resulting from any of those works—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (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 an operator; or

(b) there is any interruption in the supply of the service provided by an operator,

Network Rail must bear and pay the cost reasonably incurred by an operator in making good such damage or restoring the supply and must—

(c) make reasonable compensation to that operator for loss sustained by it; and

(d) indemnify that operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, that operator by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on Network Rail with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give Network Rail reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of Network Rail which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between Network Rail and the operator under this Schedule must be referred to and settled by arbitration under article 52 (arbitration).

15. This Part of this Schedule does not apply to—

(a) any apparatus in respect of which the relations between Network Rail and an operator are regulated by the provisions of Part 3 of the 1991 Act; or

(b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised works.

16. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between Network Rail and an operator in respect of any apparatus laid or erected in land belonging to Network Rail on the date on which this Order is made.

PART 3

FOR THE PROTECTION OF LEAD LOCAL FLOOD AUTHORITIES

17.—(1) The following provisions of this Part of this Schedule apply for the protection of the lead local flood authority unless otherwise agreed in writing between Network Rail and the lead local flood authority.

(2) In this Part of this Schedule—

"construction" includes execution, placing, altering, replacing, relaying and removal and "construct" and "constructed" are to be construed accordingly;

"drainage work" means any watercourse and includes any land which provides or is expected to provide flood storage capacity for any ordinary watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence;

"lead local flood authority" means in relation to an ordinary watercourse the lead local flood authority concerned within the meaning of section 23 of the Land Drainage Act 1991(**a**);

"ordinary watercourse" has the meaning given by the Land Drainage Act 1991; "plans" includes sections, drawings, specifications and method statements; and

"specified work" means so much of any work or operation authorised by this Order as is in, on, under, over or within 16 metres of a drainage work or is otherwise likely to affect any drainage work.

18.—(1) Before beginning to construct any specified work, Network Rail must submit to the lead local flood authority plans of the specified work and such further particulars available to it as the lead local flood authority may within 28 days of the submission of the plans reasonably require.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the lead local flood authority, or determined under paragraph 25.

(3) Any approval of the lead local flood authority required under this paragraph—

(a) must not be unreasonably withheld or delayed;

(b) is deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans for approval and, in the case of a refusal, accompanied by a statement of the grounds of refusal; and

(c) may be given subject to such reasonable requirements as the lead local flood authority may make for the protection of any drainage work.

(4) The lead local flood authority must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

19. Without limitation on the scope of paragraph 18, the requirements which the lead local flood authority may make under that paragraph include conditions requiring Network Rail at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

(a) to safeguard any drainage work against damage; or

(b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

20.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the lead local flood authority under paragraph 19, must be constructed—

(a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part of this Schedule; and

(b) to the reasonable satisfaction of the lead local flood authority,

and an officer of the lead local flood authority is entitled to watch and inspect the construction of such works.

(2) Network Rail must give to the lead local flood authority not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is brought into use.

(3) If any part of a specified work or any protective work required by the lead local flood authority is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the lead local flood authority may by notice in writing require Network Rail at Network Rail's own expense to comply with the requirements of this Part of this Schedule.

(**a**) 1991 c. 59. Section 23 was amended by section 120 of, and paragraph 192 of Schedule 22 to, the Environment Act 1995 (c. 25), paragraphs 25 and 32 of Schedule 2 to the Flood and Water Management Act 2010 (c. 29) and S.I. 2013/755.

(4) Subject to sub-paragraph (5), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served upon Network Rail, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the lead local flood authority may execute the works specified in the notice and any expenditure incurred by it in so doing is recoverable from Network Rail.

(5) In the event of any dispute as to whether sub-paragraph (3) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the lead local flood authority must not except in emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

21.—(1) Subject to sub-paragraph (3) Network Rail must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation or on land held by Network Rail for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which Network Rail is liable to maintain is not maintained to the reasonable satisfaction of the lead local flood authority, the lead local flood authority may by notice in writing require Network Rail to repair and restore the work, or any part of such work, or (if Network Rail so elects and the lead local flood authority in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the lead local flood authority reasonably requires.

(3) This paragraph does not apply to—

(a) drainage works which are vested in the lead local flood authority, or which the lead local flood authority or another person is liable to maintain and is not precluded by the powers of the Order from doing so; or

(b) any obstruction of a drainage work for the purposes of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part of this Schedule.

22. If by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by Network Rail to the reasonable satisfaction of the lead local flood authority and if Network Rail fails to do so, the lead local flood authority may make good the impairment or damage and recover from Network Rail the expense reasonably incurred by it in so doing.

23.—(1) Network Rail must pay all costs, charges and expenses which the lead local flood authority may reasonably incur or have to pay—

(a) in the examination or approval of plans under this Part of this Schedule; and

(b) in the inspection of the construction of the specified works or any protective works required by the lead local flood authority under this Part of this Schedule.

24. The fact that any work or thing has been executed or done by Network Rail in accordance with a plan approved or deemed to be approved by the lead local flood authority, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve Network Rail from any liability under the provisions of this Part of this Schedule.

25. Any dispute arising between Network Rail and the lead local flood authority under this Part of this Schedule, if the parties agree, is to be determined by arbitration under article 52 (arbitration).

PART 4

FOR THE PROTECTION OF NORTHERN POWERGRID

26. For the protection of Northern Powergrid the following provisions have effect, unless otherwise agreed in writing between Network Rail and Northern Powergrid.

27. In this part of this Schedule—

"the 1991 Act" means the New Roads and Street Works Act 1991;

"alternative apparatus" means alternative apparatus adequate to enable Northern Powergrid to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means electric lines or electrical plant (as defined in the Electricity Act 1989), belonging to or maintained by Northern Powergrid and includes any structure in which apparatus is or is to be lodged or which will give or gives access to apparatus;

"functions" includes powers and duties;

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

"Northern Powergrid" means Northern Powergrid (Yorkshire) Plc (Company No. 04112320) whose registered office is at Lloyds Court, 78 Grey Street, Newcastle-Upon-Tyne, NE1 6AF ("Northern Powergrid").

28. This Part of this Schedule does not apply to apparatus in respect of which the relations between Network Rail and Northern Powergrid are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

Apparatus in stopped up highways

29.—(1) Where a street is stopped up under article 10 (stopping up of streets) or article 17 (replacement and closure of level crossings) if Northern Powergrid has any apparatus in that street or accessed via that street Northern Powergrid is entitled to the same rights in respect of that apparatus as it enjoyed immediately before the stopping up, subject to the provisions of this paragraph, as if this Order had not been made.

(2) Regardless of the temporary stopping up streets under the powers conferred by article 12 (temporary stopping up of streets), Northern Powergrid is entitled at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that street.

Acquisition of land

30.—(1) Regardless of any provision in this Order or anything shown on the land plans, Network Rail must not acquire any apparatus or land owned by Northern Powergrid or override any easement used by Northern Powergrid otherwise than by agreement with Northern Powergrid, such agreement not to be unreasonably withheld or delayed.

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

(3) Network Rail must not under the powers of this Order acquire or use or acquire new rights over any Northern Powergrid property, or extinguish any existing rights of Northern Powergrid in respect of any third party property, except with the consent of Northern Powergrid.

(4) Where Northern Powergrid is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld or delayed but may be given subject to reasonable conditions.

Removal of apparatus

31.—(1) If, in the exercise of the powers conferred by this Order, Network Rail acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is

enjoyed or requires that Northern Powergrid's apparatus is relocated or diverted, that apparatus must not be removed under this Part, and any right of Northern Powergrid to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of Northern Powergrid in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of constructing any works in, on or under any land purchased, held, appropriated or used under this Order, Network Rail requires the removal of any apparatus placed in that land, Network Rail must give to Northern Powergrid 56 days advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Northern Powergrid reasonably needs to remove any of its apparatus) Network Rail must, subject to sub-paragraph (3), afford to Northern Powergrid the necessary facilities and rights for the construction of alternative apparatus in other land of Network Rail and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of Network Rail, or Network Rail is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed—

(a) Network Rail must in the first instance use all reasonable endeavours to acquire all necessary land interests or rights as Northern Powergrid may reasonably require for the relocation and construction of alternative apparatus and must use reasonable endeavours to procure all necessary rights to access and maintain Northern Powergrid's apparatus and alternative apparatus thereafter the terms of such access and maintenance to be agreed by Northern Powergrid (acting reasonably); and

(b) in the event Network Rail is not able to procure the necessary land interests or rights referred to in sub-paragraph 3(a) Northern Powergrid must, on receipt of a written notice to that effect from Network Rail, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for Northern Powergrid to use its compulsory purchase powers to this end unless it elects to do so.

(4) Any alternative apparatus to be constructed in land of Network Rail under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Northern Powergrid and Network Rail or in default of agreement settled by arbitration in accordance with article 52 (arbitration).

(5) Northern Powergrid must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 52 (arbitration), and after the grant to Northern Powergrid of any such facilities and rights as are referred to in subparagraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by Network Rail to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if Network Rail gives notice in writing to Northern Powergrid that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by Network Rail, that work, instead of being executed by Northern Powergrid, may be executed Network Rail or a contractor of Network Rail approved by Northern Powergrid but only with the prior written consent of Northern Powergrid (which must not be unreasonably withheld or delayed and subject to any such conditions as are reasonable and proper to protect the apparatus and ensure compliance with Northern Powergrid's licence conditions) in accordance with plans and in a position agreed between Northern Powergrid and Network Rail or, in default of agreement, determined by arbitration in accordance with article 52 (arbitration), without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Northern Powergrid.

(7) Nothing in sub-paragraph (6) authorises Network Rail to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling

around the apparatus (where the apparatus is laid in a trench) within 3000 millimetres of the apparatus unless otherwise agreed with Northern Powergrid.

Facilities and rights for alternative apparatus

32.—(1) Where, in accordance with the provisions of this Part of this Schedule, Network Rail affords to Northern Powergrid facilities and rights for the construction and maintenance in land of Network Rail of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between Network Rail and Northern Powergrid or in default of agreement settled by arbitration in accordance with article 52 (arbitration).

(2) If the facilities and rights to be afforded by Network Rail in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Northern Powergrid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by Network Rail to Northern Powergrid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

33.—(1) Not less than 42 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by Network Rail under paragraph 31 (2), Network Rail must submit to Northern Powergrid a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Northern Powergrid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Northern Powergrid is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Northern Powergrid under sub-paragraph (2) must be made within a period of 42 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If Northern Powergrid in accordance with sub-paragraph (3) and in consequence of the works proposed by Network Rail, reasonably requires the removal of any apparatus and gives written notice to Network Rail of that requirement, paragraphs 31 to 32 apply as if the removal of the apparatus had been required by Network Rail under paragraph 31(2).

(5) Nothing in this paragraph precludes Network Rail from submitting at any time or from time to time, but in no case less than 35 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) Network Rail is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to Northern Powergrid notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

Expenses and costs

34.—(1) Subject to the following provisions of this paragraph, Network Rail must pay to Northern Powergrid an amount equal to the cost reasonably incurred by Northern Powergrid—

(a) in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 6(2); and

(b) in assessing and preparing a design for its apparatus to address and accommodate the proposals of Network Rail whether or not Network Rail proceeds to implement those proposals or alternative or none at all,

provided that if it so prefers Northern Powergrid may abandon apparatus that Network Rail does not seek to remove in accordance with paragraph 31(2) having first decommissioned such apparatus.

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal and, if the apparatus removed under the provisions of this Part of this Schedule has no value, no sum is to be deducted from the amount payable under sub-paragraph (1).

(3) If in accordance with the provisions of this Part of this Schedule)—

(a) apparatus of better type, of greater capacity or of greater dimension is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller 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 Network Rail, or, in default of agreement, is not determined by arbitration (pursuant to article 52 (arbitration)) to be necessary, then, if it involves cost in the execution of works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this paragraph would be payable to Northern Powergrid by virtue of sub-paragraph (1) is to be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type, capacity, or dimensions of apparatus, or to place the apparatus at the existing depth, in which case full costs shall be borne by Network Rail.

(4) For the purposes of sub-paragraph (3)—

(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; 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.

Indemnity

35.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in this Order, or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of Network Rail or in consequence of any act or default of Network Rail (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by Network Rail under this Schedule any damage is caused to any apparatus or alternative 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 property of Northern Powergrid, or there is any interruption in any service provided by Northern Powergrid, or as a consequence Northern Powergrid becomes liable to pay any amount to a third party Network Rail must—

(a) bear and pay the cost reasonably incurred by Northern Powergrid in making good such damage or restoring the supply; and

(b) indemnify Northern Powergrid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Northern Powergrid, by reason or in consequence of any such damage or interruption or Northern Powergrid becoming liable to any third party.

(2) Nothing in sub-paragraph (1) imposes any liability on Network Rail with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Northern

Powergrid, its officers, servants, contractors or agents, and nor does sub-paragraph (1) impose any liability on Network Rail in respect of consequential losses.

(3) Northern Powergrid must give Network Rail reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of Network Rail which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Northern Powergrid must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands and penalties to which the indemnity under sub-paragraph (1) applies. If requested to do so by Network Rail, Northern Powergrid must provide an explanation of how the claim has been minimised. Network Rail is only liable under sub-paragraph (1) for claim reasonably incurred by Northern Powergrid.

Co-operation

36. Where in consequence of the proposed construction of any of the authorised development, Network Rail or Northern Powergrid requires the removal of apparatus or Northern Powergrid makes requirements for the protection or alteration of apparatus, Network Rail shall use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the need to ensure the safe and efficient operation of Northern Powergrid's undertaking taking into account the Network Rail's desire for the efficient and economic execution of the authorised development and Network Rail and Northern Powergrid shall use reasonable endeavours to co-operate with each other for those purposes.

Access

37. If in consequence of the powers conferred by this Order the access to any apparatus or alternative apparatus is materially obstructed, Network Rail shall provide such alternative means of access to such apparatus or alternative apparatus as will enable Northern Powergrid to maintain or use the said apparatus no less effectively than was possible before such obstruction.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Network Rail Infrastructure Limited to construct works on part of the upgrade to the Transpennine Leeds to Micklefield route. The Order authorises the acquisition of land and rights in land, extinguishment of rights and the use of land, for the purposes of the works and confers powers in connection with the construction and operation of the railway.

Copies of the deposited plans, the deposited sections and the book of reference referred to in the Order may be inspected, on request, at the offices of Network Rail Infrastructure Limited at Network Rail National Records Centre, Unit 5, Audax Road, Clifton Moor, York, YO30 4US.

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