

**2011 No. 41**

**TRANSPORT AND WORKS, ENGLAND**

**TRANSPORT, ENGLAND**

**The River Mersey (Mersey Gateway Bridge) Order 2011**

*Made* - - - - *11th January 2011*

*Coming into force* - - *1st February 2011*

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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 3 and 5 of the Transport and Works Act 1992(b) (“the 1992 Act”).

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

The Secretary of State, having considered the objections made and not withdrawn and the report of the person who held the inquiry, has determined to make an Order giving effect to the proposals comprised in the application with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

The Secretary of State is of the opinion that the primary object of this Order cannot be achieved by means of an Order under the Harbours Act 1964(c).

The Secretary of State is satisfied that the provision of an alternative right of way for each of the streets mentioned in Part 2 of Schedule 3 is not required.

Notice of the Secretary of State’s determination was published in the London Gazette on 23rd December 2010.

The Secretary of State, in exercise of the powers conferred by sections 3 and 5 of, and paragraphs 1 to 5, 7, 8, 10 to 13 and 15 to 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 River Mersey (Mersey Gateway Bridge) Order 2011 and shall come into force on 1st February 2011.

### **Interpretation**

2.—(1) In this Order—

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

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

“the 1980 Act” means the Highways Act 1980(f);

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

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

“the 2000 Act” means the Transport Act 2000(i);

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(a) S.I. 2006/1466.

(b) 1992 c. 42. Part 1 of this Act is amended by S.I. 1995/1541, 1998/2226, 2000/3199 and 2006/958.

(c) 1964 c. 40.

(d) 1961 c. 33.

(e) 1965 c. 56.

(f) 1980 c. 66.

(g) 1990 c. 8.

(h) 1991 c. 22. As amended by the Traffic Management Act 2004 c. 18.

(i) 2000 c. 38.

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

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

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

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

“bridge roads” means the roads that cross the new bridge and Work Nos. 1b, 1d, 1e, 1f, 3a, 3b, 4b, 4c, 4e, 4f, 4g, 4h, 4i, 4j and 5a;

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

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

“concession agreement” means a legally binding arrangement which may be comprised in one or more documents that makes provision for the design, construction, financing, refinancing, operation, maintenance or any other matter in respect of the new crossing;

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

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

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means but while in electronic form;

“exemptions register” means the register of vehicles exempt from tolls maintained by the undertaker in accordance with article 41 (power to charge tolls) and Schedule 12 (register of vehicles exempt from tolls);

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

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

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

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

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

“local planning authority” has the same meaning as in Part 1 of the 1990 Act;

“local transport plan” means the plan prepared by Halton Borough Council under section 108(3) of the 2000 Act;

“Manchester Ship Canal Acts and Orders 1885-1996” means those Acts and Orders set out in Schedule 13;

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

“motorcycle” means a mechanically propelled vehicle having less than four wheels and, in a case where a cabin is provided, the cabin of which is not so constructed as to enclose the driver and any passenger;

“navigation work” means so much of any authorised work as is in, on, over, or under—

- (a) tidal waters or tidal land below the level of mean high-water springs; or
- (b) a relevant navigation as the case may be;

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

- (a) all bridges, passages, means of access, stagings, buildings, apparatus, plant, machinery and subsidiary and incidental works; and

- (b) all piles, fenders, booms, embankments, abutments, wharves, walls, fences, drains, buildings and any other works in a relevant navigation and the banks, bed and foreshore of the relevant navigation,

constructed or provided in connection with the new bridge;

“new crossing” means the new bridge together with—

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

“new crossing area” means so much of the land within the order limits being—

- (a) tidal water or tidal land, below the level of mean high-water springs of the River Mersey; or
- (b) within any other relevant navigation;

“opening day” means the day on which the new crossing is first open for use by the public;

“the Order limits” means any limits of deviation and any limits of land to be acquired or used which are shown on the works plans and the land plans;

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

“registered keeper”, in relation to a motor vehicle means the person in whose name the vehicle is registered under the Vehicle Excise and Registration Act 1994(b);

“relevant navigation” means so much of—

- (a) the River Mersey;
- (b) the Manchester Ship Canal;
- (c) the Bridgewater Canal;
- (d) the St Helen’s Canal,

as the context requires;

“relevant navigation authority” means—

- (a) in respect of the Manchester Ship Canal, the Manchester Ship Canal Company and its successors;
- (b) in respect of the Bridgewater Canal, the Manchester Ship Canal Company and its successors;
- (c) in respect of the River Mersey, the Mersey Docks and Harbour Company and its successors;
- (d) in respect of the St Helen’s Canal, Halton Borough Council and its successors,

and references to the relevant navigation authority shall refer to such of the authorities as the context requires;

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

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

“the sections” means the sections shown on the works plans and certified by the Secretary of State as the sections for the purposes of this Order;

“Silver Jubilee Bridge” means the Silver Jubilee Bridge constructed pursuant to the Cheshire and Lancashire County Councils (Runcorn-Widnes Bridge &c.) Act 1947(c) as amended by the Runcorn - Widnes Bridge Act 1955(d) and the A533 road between its junctions with the

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(a) 1981 c. 67.  
(b) 1994 c. 22.  
(c) 1947 c. xxix.  
(d) 1955 c. xxviii.

A557 Weston Point Expressway and the A533 Daresbury Expressway in Runcorn and Ditton Junction in Widnes carried in part upon that bridge;

“street” includes part of a street;

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

“subsoil” means subsoil lying more than 1 metre beneath the level of the surface of the land and for this purpose “the level of the surface of the land” means—

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

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

“tribunal” means the Upper Tribunal;

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

“the undertaker” means Halton Borough Council;

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

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

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

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

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

### **Application of the 1991 Act**

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

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

(2) The provisions of the 1991 Act mentioned in paragraph (3) which, together with other provisions of that Act, apply in relation to the execution of street works and any regulations made or code of practice issued or approved under those provisions shall apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by this Order whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(3) The provisions of the 1991 Act referred to in paragraph (2) are—

- section 54 (advance notice of certain works), subject to paragraph (4);
- section 55 (notice of starting date of works), subject to paragraph (4);
- section 57 (notice of emergency works);

section 59 (general duty of street authority to co-ordinate works);  
section 60 (general duty of undertakers to co-operate);  
section 68 (facilities to be afforded to street authority);  
section 69 (works likely to affect other apparatus in the street);  
section 76 (liability for cost of temporary traffic regulation);  
section 77 (liability for cost of use of alternative route); and

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

(4) Sections 54 and 55 of the 1991 Act as applied by paragraph (2) shall 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.

(5) Nothing in article 11 (construction and maintenance of new or altered streets) shall—

- (a) prejudice the operation of section 87 of the 1991 Act (prospectively maintainable highways); and the undertaker shall not by reason of any duty under that article to maintain a street be taken to be a street authority in relation to that street for the purposes of Part 3 of that Act; or
- (b) have effect in relation to street works with regard to which the provisions of Part 3 of the 1991 Act apply.

## PART 2

### WORKS PROVISIONS

#### *Principal powers*

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

4.—(1) The undertaker may construct and maintain the scheduled works.

(2) Subject to article 5 (power to deviate), the scheduled works may only be constructed in the lines or situations shown on the works plans and in accordance with the levels shown on the sections.

(3) Subject to paragraph (5), the undertaker 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) works to alter the position of apparatus, including mains, sewers, drains and cables;
- (b) works to alter, erect and construct such offices and other buildings, yards, engines, machinery, apparatus, structures and other works, and conveniences as the undertaker sees fit;
- (c) works to construct junctions and communications (including the provision of steps and ramps for the use of persons on foot) with any highway or access way intersected or interfered with by, or contiguous to, any of those works, and to widen or alter any highway or access way for the purposes of connecting it with any of those works or another highway, or of crossing under or over the highway or access way;
- (d) all such embankments, aprons, abutments, retaining walls, wing walls, culverts and other such works as the undertaker thinks fit;
- (e) works to alter the course of, or otherwise interfere with, a watercourse other than a navigable watercourse;
- (f) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the scheduled works; and
- (g) works for the benefit or protection of premises affected by the scheduled works.



(4) Subject to paragraph (5), the undertaker 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 scheduled works, other than works that would interfere with a navigable watercourse.

(5) Paragraphs (3) and (4) shall only authorise the carrying out or maintenance of works outside the limits of deviation if such works are carried out on land shown on the works plans as being within the limits of land to be acquired or used.

### **Power to deviate**

5. In constructing or maintaining any of the scheduled works, the undertaker may—
- (a) deviate laterally from the lines or situations shown on the works plans to the extent of the limits of deviation for that work; and
  - (b) deviate vertically from the levels shown on the sections—
    - (i) to any extent not exceeding 3 metres upwards; or
    - (ii) to any extent downwards as may be found to be necessary or convenient.

### **Restriction on works in the River Mersey and saltmarshes**

6. Regardless of the provisions of article 5 (power to deviate), no permanent work or part of such work shall be constructed in the River Mersey except in those areas shaded grey on the works plans.

#### *Streets*

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

7.—(1) The undertaker may, for the purposes of the authorised works, enter upon so much of any of the streets specified in Schedule 2 (streets subject to street works) as is within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it, or tunnel or bore under the street;
- (b) place apparatus in the street;
- (c) maintain apparatus in the street or change its position; and
- (d) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b) and (c).

(2) This article is subject to paragraph 3 of Schedule 9 (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**

8.—(1) Subject to the provisions of this article, the undertaker may, in connection with the construction of the authorised works, stop up each of the streets specified in columns (1) and (2) of Parts 1 and 2 of Schedule 3 (streets to be stopped up) to the extent specified, by reference to the letters and numbers shown on the rights of way plans, in column (3) of those Parts of that Schedule.

(2) No street specified in columns (1) and (2) of Part 1 of Schedule 3 (being a street to be stopped up for which a substitute is to be provided) shall be wholly or partly stopped up under this article unless—

- (a) the new street to be substituted for it, which is specified in column (4) of that Part of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and thereafter maintained by the undertaker, to the

reasonable satisfaction of the street authority, between the commencement and termination points 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 of Schedule 3 (being a street to be stopped up for which no substitute is to be provided) shall 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) the undertaker 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 shall be extinguished; and
- (b) the undertaker may appropriate and use for the purposes of its undertaking so much of the site of the street as is bounded on both sides by land owned by the undertaker.

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

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

### **Temporary stopping up of streets**

**9.**—(1) The undertaker, 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 limiting the scope of paragraph (1), the undertaker may use any street stopped up under the powers conferred by this article as a temporary working site.

(3) The undertaker shall 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 limiting the scope of paragraph (1), the undertaker may exercise the powers conferred by this article in relation to the streets specified in columns (1) and (2) of Schedule 4 (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the rights of way plans, in column (3) of that Schedule.

(5) The undertaker shall not exercise the powers conferred by this article—

- (a) in relation to any street specified as mentioned in paragraph (4) without first consulting the street authority; and
- (b) in relation to any other street without the consent of the street authority, but such consent shall not be unreasonably withheld.

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

### **Access to works**

**10.** The undertaker may, for the purposes of the authorised works—

- (a) form and lay out means of access, or improve existing means of access, to the streets specified in columns (1) and (2) of Schedule 5 (access to works); and
- (b) with the approval of the highway authority, such approval not to be unreasonably withheld, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised works.

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

**11.—**(1) Subject to the provisions of article 45 (application of section 2 of the 1991 Act) the bridge roads shall be a public highway and shall be maintained by and at the expense of the highway authority from the opening day.

(2) Where a street which is not and is not intended to be a public highway is altered or diverted under this Order, the altered or diverted part of the street shall, when completed to the reasonable satisfaction of the street authority, unless otherwise agreed, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(3) In any action against the undertaker in respect of damage resulting from its failure to maintain a street to which paragraph (2) applies, section 58 of the 1980 Act shall apply as if that street were a highway maintainable at the public expense.

**Agreements with street authorities**

**12.—**(1) The undertaker may enter into agreements with street authorities 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 maintenance of the structure of any bridge or tunnel carrying a street over a railway;
- (c) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
- (d) the execution in the street of any of the works referred to in article 7(1) (power to execute street works).

(2) Such an agreement may, without limiting 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.

**Use of the Astmoor Busway for the purposes of the construction of the authorised works**

**13.—**(1) Subject to the provisions of this article and regardless of the Halton Borough Council (Runcorn Busway) Order 1997 the undertaker may, for the purposes of the authorised works, at any time prior to the expiry of 12 months from the opening day use the busway known as the Astmoor Busway for the length of that busway between its junctions with Chadwick Road and Davey Road for the purposes of the authorised works and, in particular, for the diversion of traffic that would otherwise be precluded from the use of that busway.

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

(3) The undertaker shall not exercise the powers conferred by this article unless it has—

- (a) given not less than 6 weeks' notice in writing of its intention to do so to the traffic authority and to the chief officer of police in whose area the road is situated;
- (b) advertised its intention to do so in a newspaper circulating in the area in which the new crossing is situated.

(4) For the purposes of this article “traffic authority” has the meaning given in section 121A of the Road Traffic Regulation Act 1984(a).

#### *Supplemental powers*

#### **Discharge of water**

**14.**—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised works and for that purpose may lay down, take up and alter pipes and may, on any land 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 conferred by paragraph (1) to connect to or use a public sewer or drain shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991(b).

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

(4) The undertaker shall 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 shall not be unreasonably withheld; and

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

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

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

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

(8) In this article—

(a) “public sewer or drain” means a sewer or drain which belongs to a local authority, the Homes and Communities Agency, the Environment Agency, a harbour authority within the meaning of the Harbours Act 1964(d), an internal drainage board, a joint planning board, or a sewerage undertaker; and

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

#### **Protective works to buildings**

**15.**—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker considers to be necessary or expedient.

(2) Protective works may be carried out—

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

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(a) 1984 c. 27.  
(b) 1991 c. 56.  
(c) S.I. 2010/675.  
(d) 1964 c. 40.

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

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

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

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

(5) Before exercising—

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

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

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 62 (arbitration).

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

(8) Where—

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

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

(9) Without prejudice to article 61 (no double recovery) nothing in this article shall relieve the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act.

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

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

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the construction, maintenance or operation of the authorised works; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, maintenance or operation of the authorised works.

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

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

- (a) survey or investigate any land shown within the Order limits or which may be affected by the authorised works;
- (b) without limiting the scope of sub-paragraph (a), make trial holes in such positions as the undertaker thinks fit on the land to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limiting 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; and
- (e) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (d).

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

(3) Any person entering land under this article on behalf of the undertaker—

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

(4) No trial holes shall 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 shall not be unreasonably withheld.

(5) The undertaker shall 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, under Part 1 of the 1961 Act.

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

### **Additional powers**

17.—(1) Subject to Schedule 10 (protective provisions) and having had reasonable regard to any relevant representations made by any user of the River Mersey but otherwise without prejudice to the other powers conferred by this Order or otherwise available to it, the undertaker may within the new crossing area for the purpose of or in connection with the carrying out and maintenance of the authorised works to be carried out within the new crossing area and regardless of any interference with any public or private rights—

- (a) alter, relocate or replace any navigation work;
- (b) carry out excavations and clearance, dredging, deepening, dumping and pumping operations;
- (c) sell, use, appropriate and dispose of any materials (including liquids) obtained by it in carrying out any such operations;
- (d) remove or relocate any mooring so far as may be reasonably necessary for the purposes of carrying out or maintaining the authorised works;
- (e) temporarily moor or anchor vessels and structures;
- (f) temporarily alter, interfere with, occupy and use the banks, bed, foreshores, waters and walls of a relevant navigation; and

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(a) 1979 c. 46.

(g) construct, place, maintain and remove temporary works and structures,

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

(2) Except in the case of urgency, the undertaker shall use reasonable endeavours to notify the owner of any mooring affected by the proposal to exercise the powers conferred by sub-paragraph (1)(d) before the exercise of those powers.

(3) The undertaker shall pay compensation to any person entitled to compensation under the 1961 Act who suffers any loss or damage from the exercise of the powers conferred by sub-paragraph 1(d).

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

### **Prohibitions within the new crossing area, etc.**

**18.**—(1) Regardless of anything in any other enactment or rule of law but subject to the provisions of this article, the relevant navigation authority shall, if the undertaker reasonably so requires during construction of the new crossing or at any other time for reasons of public safety, at the request of the undertaker and at the undertaker's expense, by direction close the whole or any part of the new crossing area to navigation by all vessels or by any class of vessel.

(2) In the event that no navigation authority has or admits to have jurisdiction to issue a direction under paragraph (1) the undertaker may by direction close the whole or any part of the new crossing area to navigation by all vessels or by any class of vessel for the purposes of the authorised works during construction of the new crossing or at any other time for reasons of public safety and the provisions of this article shall apply to the undertaker as if the undertaker was the relevant navigation authority.

(3) Subject to paragraph (4), a direction under paragraph (1) or (2) shall specify the duration of the closure, the part of the relevant navigation affected and the vessels to which it applies.

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

(5) A person may not, without the written consent of the relevant navigation authority, within any part of the new crossing area, during a period when it is closed to navigation under this article—

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

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

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

(7) Except in an emergency, the relevant navigation authority shall at the undertaker's expense publish notice of any direction given under paragraph (1) or (2) in at least one local newspaper circulating in the area in which the works are situated, not less than 14 days before the direction is to take effect.

(8) In making a direction pursuant to paragraph (1) or (2), the relevant navigation authority shall ensure that no more of the new crossing area is closed to navigation at any time by all vessels, or by any class of vessel, than is at that time necessary in the circumstances.

(9) If complete closure of the new crossing area to all vessels or to any particular class of vessels is necessary at any time, the undertaker shall secure that any work of construction or maintenance of the new crossing shall be carried out as soon as reasonably practicable to ensure that the

minimum obstruction, delay or interference is caused to vessels which may be using or intending to use the new crossing area.

(10) Without prejudice to article 22 (application of Part 1 of the 1965 Act), neither the undertaker nor the relevant navigation authority shall be liable for any costs, damages or expenses whatsoever incurred by any person as a result, directly or indirectly, of any closure of the new crossing area under this article.

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

#### **Protection of the new crossing, etc.**

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

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

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

and to the extent that any activity within sub-paragraph (a) or (b) affects a navigation work the consent in writing of the relevant navigation authority shall also be required, provided that this paragraph shall not require the undertaker to obtain the consent of the relevant navigation authority except in accordance with Schedule 10 (protective provisions).

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

(4) A person who without reasonable excuse contravenes paragraph (1) or (2), or fails to comply with any conditions attached to a consent given by the undertaker or the relevant navigation authority under paragraph (3), shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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

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

- (a) so moor without the consent of the relevant navigation authority;
- (b) so place without the consent of the relevant navigation authority and the undertaker; or
- (c) anchor any vessel except in an emergency.

(2) The restrictions in paragraph (1) shall have effect in relation to the relevant navigation from a day 14 days after notice of their imposition on that relevant navigation has been published in at least one local newspaper circulating in the area in which the authorised works are situated or the day on which a plan, chart or map showing the exclusion zone has been deposited at the principal office of any relevant navigation authority whichever is later.

(3) In this article “exclusion zone” means so much of any relevant navigation as is bounded by imaginary parallel lines drawn at a distance of 40 metres on either side of the centre line of the new crossing.



**PART 3**  
**ACQUISITION AND POSSESSION OF LAND**

*Powers of acquisition*

**Power to acquire land**

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

(2) This article is subject to article 28 (temporary use of land for construction of works).

**Application of Part 1 of the 1965 Act**

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

(a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981(a) applies; and

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

(2) Part 1 of the 1965 Act, as so applied, shall have effect as if section 4 (which provides a time limit for compulsory purchase of land) and paragraph 3(3) of Schedule 3 (which makes provision as to the giving of bonds) were omitted.

**Application of the Compulsory Purchase (Vesting Declarations) Act 1981**

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

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

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

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

(a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and

(b) published in a local newspaper circulating in the area in which the land is situated.”.

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

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

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

(a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or

(b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

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

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(a) 1981 c. 67.

(b) 1981 c. 66.

- (a) in subsection (1), after “publication” there shall be inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) shall be omitted.

(7) In section 7 (constructive notice to treat) in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” shall be omitted.

(8) References to the 1965 Act shall be construed as references to that Act as applied to the acquisition of land under article 21 (power to acquire land).

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

**24.—**(1) The undertaker may acquire compulsorily such easements or other rights over any land referred to in paragraph (1) of article 21 (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) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights)) where the undertaker acquires a right over land under paragraph (1) the undertaker shall not be required to acquire a greater interest in that land.

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

### **Rights under or over streets**

**25.—**(1) The undertaker may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised works and may use the subsoil or air-space for those purposes or any other purpose ancillary to its undertaking.

(2) Subject to paragraph (4), the power under paragraph (1) may be exercised in relation to a street without the undertaker being required to acquire any part of the street or any easement or right in the street.

(3) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person’s interest in the land, and who suffers loss by the exercise of that power, shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

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

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

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

### **Open Space at Widnes**

**26.—**(1) The Widnes special category land shall not vest in the undertaker until the undertaker has acquired the Widnes exchange land.

(2) Upon the vesting of the Widnes special category land in the undertaker it shall be discharged from all rights, trusts and incidents to which it was previously subject.

(3) The undertaker shall lay out the Widnes exchange land as replacement open space before the authorised works are first brought into use.

(4) Upon completion of the laying out of the Widnes exchange land as open space to the satisfaction of the local planning authority, the local planning authority shall issue a certificate to that effect.

(5) Upon the date of the certificate issued pursuant to paragraph (4)—

- (a) parcel E1 of the Widnes exchange land shall vest in the person who is the owner of parcels 176 and 177 at the date of the vesting pursuant to paragraph (1) subject to the like rights, trusts and incidents as previously attached to the Widnes special category land; and
- (b) parcel E2 of the Widnes exchange land shall vest in the person who is the owner of parcels 178 and 181 at the date of the vesting pursuant to paragraph (1) subject to the like rights, trusts and incidents as previously attached to the Widnes special category land.

(6) In this article—

“the Widnes Existing Open Space Plan” and “the Widnes Exchange Land Plan” mean the plans certified by the Secretary of State as those plans for the purposes of this Order;

“the Widnes special category land” means the land described as open space and coloured green on the plan entitled “Widnes Existing Open Space Plan”;

“the Widnes exchange land” means the land described as replacement open space and marked E1 and E2 on the plan entitled “Widnes Exchange Land Plan”;

“parcel E1” means the area of the Widnes exchange land marked E1 on the Widnes Exchange Land Plan; and

“parcel E2” means the area of the Widnes exchange land marked E2 on the Widnes Exchange Land Plan.

### **Open Space on Wigg Island**

27.—(1) The Wigg Island special category land shall not vest in the undertaker until the undertaker has acquired the Wigg Island exchange land.

(2) Upon the vesting of the Wigg Island special category land in the undertaker it shall be discharged from all rights, trusts and incidents to which it was previously subject.

(3) The undertaker shall lay out the Wigg Island exchange land as replacement open space before the authorised works are first brought into use.

(4) Upon completion of the laying out of the Wigg Island exchange land as open space to the satisfaction of the local planning authority, the local planning authority shall issue a certificate to that effect.

(5) Upon the date of the certificate issued pursuant to paragraph (4) the Wigg Island exchange land shall vest in the person who is the owner of the Wigg Island special category land at the date of the vesting pursuant to paragraph (1) and shall be subject to the like rights, trusts and incidents as previously attached to the Wigg Island special category land, with the exception of the Section 19(1)(b) land which shall remain discharged from all rights, trusts and incidents to which it was previously subject.

(6) In this article—

“the Wigg Island Existing Open Space Plan” and “the Wigg Island Exchange Land Plan” mean the plans certified by the Secretary of State as those plans for the purposes of this Order;

“the Wigg Island special category land” means the land described as open space and coloured green on the plan entitled “Wigg Island Existing Open Space Plan”;

“the Wigg Island exchange land” means the land described as replacement open space and marked E1, and E2 on the plan entitled “Wigg Island Exchange Land Plan”; and

“the Section 19(1)(b) land” means part of the land delineated on the Wigg Island Existing Open Space Plan which the Secretary of State has certified as not exceeding 209 square metres and that the giving in exchange of other land for the Section 19(1)(b) special category land is unnecessary for the purposes of section 19(1) of the Acquisition of Land Act 1981.

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

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

- (a) enter upon and take temporary possession of the land specified in columns (1) and (2) of Schedule 7 (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 specified in column (4) of that Schedule;
- (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; and
- (d) use the land for the purposes of a working site with access to the working site for construction purposes in connection with the authorised works.

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

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the work specified in relation to that land in column (4) of Schedule 7.

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

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

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

(7) Without prejudice to article 61 (no double recovery), nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5).

(8) The powers of compulsory acquisition of land conferred by this Order shall not apply in relation to the land referred to in paragraph (1) except that the undertaker shall not be precluded from acquiring new rights over any part of that land under article 24 (power to acquire new rights).

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

(10) Section 13 of the 1965 Act shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 22(1) (application of Part 1 of the 1965 Act).

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

29.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any of the scheduled works, the undertaker 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) shall not authorise the undertaker to take temporary possession of—
  - (a) any house or garden belonging to a house; or
  - (b) any building (other than a house) if it is for the time being occupied.
- (3) Not less than 28 days before entering upon and taking temporary possession of land under this article the undertaker shall serve notice of the intended entry on the owners and occupiers of the land.
- (4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary 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, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.
- (6) The undertaker shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.
- (7) Any dispute as to a person’s entitlement to compensation under paragraph (6), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.
- (8) Without prejudice to article 61 (no double recovery), nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).
- (9) Where the undertaker takes possession of land under this article, it shall not be required to acquire the land or any interest in it.
- (10) Section 13 of the 1965 Act shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 22(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.

*Compensation*

**Disregard of certain interests and improvements**

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

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

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

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

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

**31.—**(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal shall set off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to

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

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 24 (power to acquire new rights), the tribunal shall set off against the value of the rights so acquired—

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

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

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

### *Supplementary*

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

**32.**—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 22 (application of Part 1 of the 1965 Act)) in any case where—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

whichever is the sooner.

(2) All private rights of way over land owned by the undertaker which, being within the limits of land which may be acquired or used, is required for the purposes of this Order shall be extinguished on the appropriation of the land for any of those purposes by the undertaker.

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

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

(5) This article does not apply in relation to any right of way to which section 271 or 272 of the 1990 Act (extinguishment of rights of statutory undertakers, etc.) or paragraph 2 of Schedule 9 (provisions relating to statutory undertakers, etc.) applies.

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

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

- (a) no notice to treat shall be served under Part 1 of the 1965 Act as applied to the acquisition of land by article 22 (application of Part 1 of the 1965 Act); and

- (b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 23 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The powers conferred by article 28 (temporary use of land for construction of works) shall cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph shall prevent the undertaker 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 OPERATIONAL

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

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

### **Restriction on use of the new crossing by certain classes of vehicle or person**

36.—(1) No vehicle shall be permitted to enter upon or use any of the bridge roads unless it is a vehicle within a class of motor vehicles contained or referred to in Classes B(a), B(b), C(a), C(b), E(a) or E(b) in Part 2, or any class of vehicle referred to in Parts 3 to 5, of the Schedule to the Road User Charging and Work Place Parking Levy (Classes of Motor Vehicles) (England) Regulations 2001<sup>(a)</sup> and no person shall be permitted to enter upon or use those roads unless they are a person carried by or within such a vehicle.

(2) The undertaker may at any time suspend the restriction in paragraph (1)—

- (a) in relation to any class of vehicle or a vehicle or person within a vehicle of such a class;
- (b) for any length of time; or
- (c) in respect of all or any part of the bridge roads,

if at any time it considers it necessary or expedient to do so.

### **Closing the new crossing**

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

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

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

### **No mains or pipes**

38.—(1) Subject to paragraph (2), regardless of anything contained in the 1980 Act or in any other enactment no person shall enter upon, break up or interfere with any scheduled work or the carriageways and footways of the works authorised by this Order except Work No. 2a for the purpose of installing any main, pipe or wire or executing any work in, on or under a work

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(a) S.I. 2001/2793.



authorised by this Order, except with the consent of the undertaker and in accordance with such terms or conditions and subject to such charges as the undertaker may determine.

(2) The consent of the undertaker to the breaking up of and interference with any of the works or the carriageways and footways of any work for the purposes of installing water mains, water pipes or electric lines in them shall not be withheld unreasonably and any question which may arise as to whether such consent is so withheld or as to whether the terms and conditions subject to which any such consent is given are reasonable shall be resolved by an arbitrator under article 62 (arbitration).

### **Trespass on the new crossing**

**39.**—(1) Any person who without reasonable excuse—

- (a) enters upon any part of the new crossing which is not a carriageway, cycle track or footway; or
- (b) trespasses upon any land of the undertaker in dangerous proximity to the new crossing or to any electrical or other apparatus used for or in connection with the operation of the new crossing,

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

(2) No person shall be convicted of an offence under paragraph (1) unless it is shown that a notice warning the public not to trespass upon the new crossing was clearly exhibited and maintained near to the place where the offence is alleged to have been committed or the place at which the trespass upon the new crossing or land is alleged to have begun.

(3) If the tolls payable by any person wishing to use the new crossing are demanded of that person before using it, and that person shall, after those tolls have been demanded (whether by any collector or other person appointed to receive those tolls), refuse or without reasonable excuse neglect to pay those tolls or any part of any toll, the collector or other person so appointed may refuse to permit that person to use the new crossing and may, alone, or with such assistance as that person shall think necessary, stop the person in default from using the new crossing.

### **Offences and power to make byelaws**

**40.**—(1) The undertaker may make and enforce byelaws regulating the use and operation of the new crossing, the maintenance of order on and about the new crossing and the conduct of all persons including employees of the undertaker while on and about the new crossing.

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

- (a) with respect to the payment of tolls and the evasion of payment of tolls;
- (b) with respect to requirements for persons in charge of a vehicle that is used on the new crossing to—
  - (i) display a document in that vehicle; or
  - (ii) carry in or fix equipment to that vehicle,

and with respect to the failure to do so or the failure to do so in accordance with the undertaker's requirements;

- (c) with respect to interference with, or obstruction of, the operation of the new crossing or other facilities provided in connection with the new crossing;
- (d) with respect to the prevention of nuisances on the new crossing;
- (e) for the recovery, safe custody and re-delivery or disposal of any property or vehicles left on the new crossing and for fixing the charges made in respect of any such property or vehicles;
- (f) to prohibit vehicles from stopping or remaining at rest in prescribed places on the bridge roads or elsewhere in or about the new crossing, except in prescribed circumstances;

- (g) to require any person in charge of a vehicle which is at rest by reason of breakdown in a prescribed place on any of the bridge roads to take prescribed steps for reporting that fact and the position and circumstances in which the vehicle is at rest;
- (h) to prohibit any person, other than a constable or an appointed person—
  - (i) from carrying out, or attempting to carry out, a repair, adjustment or refuelling of such a vehicle to which sub-paragraph (g) applies except with permission expressly given by a constable or an appointed person; and
  - (ii) from moving, or attempting to move, such a vehicle from the position in which it is at rest;
- (i) to prohibit persons from carrying out, or attempting to carry out, a repair, adjustment or refuelling of a vehicle;
- (j) to empower a constable or an appointed person to remove from its position to a prescribed area a vehicle which is for the time being at rest in a prescribed place on any bridge road—
  - (i) in contravention of the byelaws;
  - (ii) by reason of breakdown;
  - (iii) without any person being in charge of it; or
  - (iv) with the person in charge of it not being present in or on it;
- (k) in the case of a vehicle which is so removed or which at the request of the person in charge of it is repaired, adjusted or refuelled (instead of being removed) by an appointed person, to require the prescribed person to pay a charge of an amount to be determined in accordance with such scales and other provisions as may be prescribed;
- (l) to prohibit a person from obstructing any action taken by a constable or an appointed person for the purpose of removing a vehicle in accordance with the byelaws;
- (m) to ensure the safety of vehicles passing over the new crossing; and
- (n) to restrict and regulate the passage of dangerous goods or traffic on the new crossing.

(3) Byelaws under this article may—

- (a) designate places on the new crossing at which tolls (other than tolls with respect to which a prepayment has been made) are to be paid or become due to be paid;
- (b) make provision as to the persons by whom, and the manner in which, such tolls or other charges are to be paid;
- (c) make provision for securing that vehicles in respect of which tolls are payable do not use the new crossing without payment of the tolls; and
- (d) make provision for preventing a vehicle which—
  - (i) having used the new crossing; or
  - (ii) being about to use the new crossing,

has arrived at the place at which a toll is payable in respect of it from proceeding beyond that place without a toll having been paid.

(4) Byelaws made under this article shall provide for a notice specifying—

- (a) the categories of vehicles in respect of which tolls are payable; and
- (b) the amount of the tolls in respect of each category,

to be displayed at each place designated in accordance with sub-paragraph (3)(a).

(5) Byelaws under this article may provide for it to be an offence for a person to contravene, or to fail to comply with, a provision of the byelaws and for such a person to be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) Without prejudice to paragraph (5), where the undertaker considers it expedient to do so it may prosecute legal proceedings in respect of offences under this Order.

(7) Without prejudice to paragraph (5), a person who without reasonable excuse—

- (a) refuses or fails to pay a toll for which that person is liable; or
- (b) attempts to evade payment of such a toll,

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

(8) Without prejudice to the taking of proceedings for an offence included in byelaws by virtue of paragraph (5), if the contravention of, or failure to comply with, any byelaw under this article is attended with danger or annoyance to the public or the undertaker or hindrance to the undertaker in the operation of the new crossing, the undertaker may summarily take action to obviate or remove the danger, annoyance or hindrance.

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

(10) At least 28 days before applying for any byelaws to be confirmed under this article, the undertaker shall publish in such manner as may be approved by the Secretary of State a notice of its intention to apply for the byelaws to be confirmed and of the place at which and the time during which a copy of the byelaws will be open to public inspection; and any person affected by any of the byelaws may make representations on them to the Secretary of State within a period specified in the notice, being a period of not less than 28 days.

(11) For at least 28 days before an application is made under this article for byelaws to be confirmed, a copy of the byelaws shall be kept at the principal office of the undertaker and shall at all reasonable hours be open to public inspection without payment.

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

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

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

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

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

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

shall be rebuttable evidence of the facts stated in the certificate.

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

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

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(a) 1988 c. 53.

(19) In this article—

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

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

“prescribed” means prescribed by byelaws made under this Order.

## PART 5

### TOLLING, CONCESSION AND FINANCING ARRANGEMENTS

#### **Power to charge tolls**

**41.**—(1) The undertaker may charge tolls or charges for the passage of vehicles over the new crossing or for any other services or facilities provided in connection with the new crossing.

(2) The power to charge tolls or charges referred to in paragraph (1) shall include the power to charge, set, demand, take, recover and waive tolls or charges (or any part of such tolls or charges) and the power to suspend the charging of tolls or charges in whole or in part.

(3) The power to charge tolls or charges shall commence with the opening day but this limitation shall not affect the ability to set tolls or charges prior to that date.

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

(5) The undertaker may appoint any person to collect tolls or charges as its agent.

(6) Schedule 11 (level of tolls) shall have effect and the tolls chargeable in respect of any vehicle or class of vehicles shall be determined and revised in accordance with Part 1 of that Schedule.

(7) The person by whom tolls under this Order and penalty charges imposed in connection with this Order are payable in respect of a motor vehicle is the registered keeper.

(8) The undertaker shall establish and maintain an exemptions register in accordance with Schedule 12 (register of vehicles exempt from tolls).

(9) Toll may not be charged in respect of vehicles where the particulars of the vehicle in question have been entered upon the exemptions register.

(10) The tolls or charges charged in accordance with this article may be applied by the undertaker—

- (a) in paying the costs and expenses incurred in designing, constructing, managing, operating and maintaining the new crossing and in managing, operating and maintaining the Silver Jubilee Bridge or any costs associated with financing any of the same;
- (b) in providing such funds as are, or are likely to be, necessary to discharge the obligations of the undertaker pursuant to a concession agreement;
- (c) in paying the interest on, and repaying the principal of, monies borrowed in respect of the new crossing or the Silver Jubilee Bridge;
- (d) in making payment into any maintenance or reserve fund provided in respect of the new crossing and the Silver Jubilee Bridge;
- (e) in making payments to the undertaker’s general fund for the purpose of directly or indirectly facilitating the achievement of policies relating to public transport in its local transport plan, or for other purposes relating to transport; and

- (f) in providing funds for, meeting expenses incurred in, or the cost of securing any necessary authority or consent for, constructing or securing the construction, maintenance and operation of, the new crossing or securing the maintenance or operation of the Silver Jubilee Bridge (as the case may be) or works to the Silver Jubilee Bridge.

(11) The undertaker shall not apply any of the tolls or charges for the purposes mentioned in sub-paragraphs (e) and (f) of paragraph (10)—

- (a) in a manner that would contravene Directive 1999/62/EC of the European Parliament and of the Council of 17th June 1999<sup>(a)</sup> on the charging of heavy goods vehicles for the use of certain infrastructure as amended by Directive 2006/38/EC of the European Parliament and of the Council of 17th May 2006<sup>(b)</sup> and Council Directive 2006/103/EC of 20th November 2006<sup>(c)</sup>; or
- (b) unless it is satisfied that it has applied for the purposes of sub-paragraphs (a) to (d) of that paragraph sufficient funds to ensure the safe, efficient and economic management, operation and maintenance of the new crossing in accordance with all applicable statutory requirements.

(12) Where any scheme of discounts or waivers is proposed in respect of tolls payable or prospectively payable under this Order the undertaker shall in deciding to adopt or apply any such scheme have regard to the most appropriate way of providing the benefits of such a scheme to those socio-economic groups within the Borough of Halton least able to afford the full price of tolls.

### **Payment of tolls**

**42.—**(1) Subject to paragraphs (5) and (11) of this article a toll imposed by this Order, the amount of which is determined in accordance with Schedule 11 (level of tolls), shall be paid by such method as may be specified by the undertaker or such other method as the undertaker may in the particular circumstances of the case accept.

(2) Without limiting the scope of paragraph (1), except where the undertaker elects in accordance with paragraph (5), tolls may be payable—

- (a) when demanded by a person authorised by the undertaker or its agent in that behalf at a place designated by the undertaker for the collection of tolls; or
- (b) by inserting the appropriate payment for a toll at any appropriate collection point.

(3) The undertaker or its agent may enter into an agreement (“composition agreement”) under which persons compound, on such terms as may be provided by the agreement, for the payment of tolls in respect of the use of the new crossing.

(4) A composition agreement may relate to use on such number of occasions or during such period as may be provided by the agreement.

(5) Where the condition described in paragraph (13) applies the undertaker may elect that, instead of any other method of payment, tolls shall be payable by means of entering into a composition agreement in which case the undertaker may require that method to apply exclusively.

(6) Without limiting the scope of paragraph (4), a composition agreement may be entered into for one of the following periods—

- (a) the duration of a single journey;
- (b) a number of single journeys specified in the composition agreement;
- (c) a single day or any number of single days;
- (d) a period of 5 or 7 consecutive days;

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(a) OJL 187, 20.7.1999, p 42.

(b) OJL 157, 9.6.2006, p 8.

(c) OJL 363, 20.12.2006, p 344.

- (e) a period of a single month; or
- (f) a period of one year.

(7) Where the undertaker has elected pursuant to paragraph (5) that the exclusive method of paying tolls shall be by means of entering a composition agreement, such a composition agreement may be entered into—

- (a) on the day concerned, the first day concerned or (where it relates to a single journey) the day of the journey concerned;
- (b) on a day falling within the period of 64 days immediately preceding the day concerned, the first day concerned, or (where it relates to a single journey) the day of the journey concerned; or
- (c) on the day after the day concerned, the first day concerned, or (where it relates to a single journey) the day of the journey concerned.

(8) The following provisions shall apply to composition agreements—

- (a) a composition agreement shall be specific to a particular vehicle;
- (b) that vehicle shall be identified by its registration mark; and
- (c) a person entering into a composition agreement with the undertaker shall specify to the undertaker or its agent the registration mark of the vehicle to which the composition agreement relates.

(9) Where a composition agreement is entered into or purported to be entered into, and payment is to be made to the undertaker otherwise than in cash, and payment is not received by the undertaker or its agents (whether because a cheque is dishonoured or otherwise), the toll or tolls to which the composition agreement relates shall be treated as not paid and the composition agreement shall be void.

(10) The undertaker may require a vehicle that is subject to a composition agreement to display a document in that vehicle or carry in or fix equipment to that vehicle.

(11) The undertaker may impose such reasonable conditions upon the making of a composition agreement as it considers appropriate including in relation to the transfer of the benefit of composition agreements or refund of payments.

(12) Where any composition agreement provides for a discount or waiver of any toll or part of any toll calculated solely by reference to the use of the new crossing—

- (a) for a number of journeys; or
- (b) for any period,

users of the new crossing or prospective users of the new crossing shall not be prevented from entering into such a composition agreement by reason of their place of residence or business.

(13) The condition referred to in paragraph (5) is fulfilled when the method of payment for use of the new crossing is not secured by the use of barriers preventing vehicles from proceeding until a toll is paid.

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

43.—(1) The undertaker may, on such terms as it sees fit, at any time and for any period, enter into one or more concession agreements and for that purpose may provide for the exercise of the powers of the undertaker in respect of the authorised activities or any part of them, together with the rights and obligations of the undertaker in relation to them, by any other person and other matters incidental or subsidiary to them or consequential to them, and the defraying of, or the making of contributions towards the costs of the matters whether by the undertaker or any other person.

(2) The undertaker may, with the consent of the Secretary of State, transfer, sell, lease, charge or otherwise dispose of, on such terms and conditions as it thinks fit, the whole or any part of the new crossing and any land held in connection with the new crossing or the right to operate the authorised works under this Order.

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

(4) The exercise of the powers of any enactment by any person in pursuance of any agreement under paragraph (1), or any sale, lease, charge or disposal under paragraph (2), shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those powers were exercised by the undertaker.

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

**44.**—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the new crossing or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the carrying out of the authorised activities or any part of them,

so far as any such agreement relates to the terms on which any land is subject to a lease granted by or under that agreement.

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

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

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

#### **Application of section 2 of the 1991 Act**

**45.** Section 2 (exercise of highway functions by concessionaire) of the 1991 Act shall apply to any concession agreement under article 43(1) or to any agreement under article 43(2) as if any such agreement were a concession agreement under Part 1 of the 1991 Act.

#### **Application of the 2000 Act**

**46.**—(1) Regulations made pursuant to section 173 (penalty charges) of the 2000 Act shall have effect in respect of the new crossing as if the tolls and charges charged pursuant to this Order were charges payable pursuant to a charging scheme made by order under Part 3 of the 2000 Act.

(2) The imposition and payment of penalty charges in connection with this Order shall be in accordance with such regulations as the Secretary of State may make pursuant to section 173 of the 2000 Act.

(3) Sections 174 (examination, entry, search and seizure), 175 (immobilisation etc.) and 176 (equipment etc.) of the 2000 Act shall have effect in respect of the new crossing as if Part 5 of this Order was a charging scheme made by order under Part 3 of the 2000 Act.

## PART 6

### MISCELLANEOUS AND GENERAL

#### **Planning permission and supplementary matters**

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

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

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

#### **Power to lop trees overhanging the authorised works**

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

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

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

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

#### **Disapplication of the Commons Act 2006**

**49.** No land within the limits of land to be acquired or used may be the subject of an application under section 15 (registration of greens) of, or paragraphs 2 to 4 of Schedule 2 (non-registration or mistaken registration under the 1965 Act) to, the Commons Act 2006(d).

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(a) S.I. 1969/17.  
(b) S.I. 1975/148.  
(c) S.I. 1999/1892.  
(d) 2006 c. 26.



### **Proceedings in respect of statutory nuisance**

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

- (a) that the nuisance relates to premises used by the undertaker for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to the construction or maintenance of the authorised works and that the nuisance is attributable to the carrying out of works which are being carried out in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(b); or
- (b) that the nuisance is a consequence of the construction, maintenance or use of the authorised works and that it cannot reasonably be avoided.

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

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

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

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

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

(2) Schedule 8 (protection of navigation) shall have effect.

### **Removal of vessels**

**52.**—(1) If it appears to the undertaker necessary or convenient to do so for the purposes of the construction or maintenance of the authorised works it may remove from within the new crossing area any vessel or structure that is—

- (a) sunk, stranded or abandoned; or
- (b) moored or laid up (whether lawfully or not),

either to another place within the new crossing area or to a place outside the new crossing area where it may without injury to the vessel be moored or laid.

(2) Before exercising the powers conferred by paragraph (1) the undertaker shall—

- (a) publish a notice of its intention to do so in Lloyd's List and once in each of two successive weeks in a local newspaper published or circulating in the borough of Halton, with an interval between the dates of publication of not less than 6 clear days; and
- (b) display notice of this in a conspicuous position adjacent to that part of the new crossing area in which a vessel to which paragraph (1) applies is located.

(3) Each of the notices shall—

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(a) 1990 c. 43.  
(b) 1974 c. 40.

- (a) state the reason for requiring removal of any vessel from within that part of the new crossing area specified in the notice; and
- (b) specify a date, which shall be a date not earlier than one month after the last date on which a notice is published pursuant to sub-paragraph (2)(a), by which all vessels must be removed from within that part of the new crossing area specified in the notice.

(4) If the owner or master of any vessel within the new crossing area does not remove that vessel from within the new crossing area before the date specified in accordance with sub-paragraph (3)(b), the undertaker may, having first consulted the relevant navigation authority, cause that vessel to be removed.

(5) The undertaker may recover as a debt from the owner of any vessel removed pursuant to paragraph (4) all expenses incurred by the undertaker in respect of its removal.

**Obstruction of construction of authorised works**

53. Any person who, without reasonable excuse—

- (a) obstructs any person acting under the authority of the undertaker 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 the undertaker,

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

**Disclosure of confidential information**

54. A person who—

- (a) enters a factory, workshop or workplace in pursuance of the provisions of article 15 (protective works to buildings) or article 16 (power to survey and investigate land); and
- (b) discloses to any person any information obtained pursuant to sub-paragraph (a) and relating to any manufacturing process or trade secret,

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

**Statutory undertakers, etc.**

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

**Protective provisions**

56. The provisions of Schedule 10 (protective provisions) shall have effect.

**Disapplication of provisions relating to the conservation of the River Mersey**

57. The provisions of the Act passed in the fifth and sixth years of the reign of Queen Victoria (1842) titled “An Act for better preserving the navigation of the River Mersey”(a) shall not apply in relation to the construction of any authorised works in the River Mersey.

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(a) 1842 c. cx.

## **Disapplication of certain provisions of the Manchester Ship Canal Acts and Orders**

**58.** The charges over the land, property or undertaking of the Manchester Ship Canal Company imposed pursuant to the Manchester Ship Canal Acts and Orders 1885-1996 shall not apply to any land, or interest in land transferred, leased or granted to the undertaker by the Manchester Ship Canal Company whether that transfer is by agreement or pursuant to Part 3.

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

**59.** The undertaker shall, as soon as practicable after the making of this Order, submit copies of the book of reference, the sections, the works plans, the land plans, the rights of way plans, the open space and exchange land plans to the Secretary of State for certification that they are, respectively, true copies of the book of reference, sections, works plans, land plans, rights of way plans, the open space and exchange land plans referred to in this Order; and a document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

### **Service of notices**

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

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

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978(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 shall be 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 shall 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).

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

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

#### **No double recovery**

**61.** Compensation shall not be payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law.

#### **Arbitration**

**62.** Any difference under any provision of this Order, unless otherwise provided for, shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after 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

11th January 2011

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

# SCHEDULES

## SCHEDULE 1

Article 4

### SCHEDULED WORKS

Borough of Halton

*Work No. 1a* An improvement of the eastbound carriageway of Speke Road (920 metres in length) commencing at a point 460 metres to the east of the underbridge crossing St Michael's Road and terminating at Ditton Junction and construction of part of a signalised junction (Ditton Junction).

*Work No. 1b* A new toll plaza on embankment (1140 metres in length) commencing at the underbridge above St Michael's Road and terminating at the eastern end of the toll plaza area.

*Work No. 1c* A new road (1045 metres in length) commencing 300 metres to the east of the underbridge above St Michael's Road and terminating at Ditton Junction and construction of part of a signalised junction (Ditton Junction).

*Work No. 1d* A new road (1300 metres in length) part on embankment commencing at the termination of Work No. 1b and terminating at the commencement of Work Nos. 4b and 4c including a new bridge crossing Ditton Junction, a new bridge crossing the Garston to Timperley Freight Railway, a viaduct crossing Victoria Road, bridges crossing the Widnes Loops slip roads (Work Nos. 3a and 3b) and a new bridge crossing the St Helens Canal.

*Work No. 1e* A new road (400 metres in length) forming the eastbound slip onto the main carriageway from Ditton Junction commencing at Moor Lane South and terminating at the merge with the main carriageway forming Work 1d and incorporating a toll plaza.

*Work No. 1f* A new road (390 metres in length) incorporating a toll plaza commencing at Queensway (Work No. 2b) and terminating at the merge with the main carriageway forming Work No. 1d.

*Work No. 2a* A new road (585 metres in length) commencing at Ditton Road passing in a northeast direction below Work No. 1d and terminating at Moor Lane South.

*Work No. 2b* A new road (170 metres in length) commencing at Ditton Junction (Work No. 2a) and terminating at a point 210 metres north of the junction of Queensway and Desoto Road West.

*Work No. 3a* A new road (995 metres in length) incorporating a toll plaza commencing at the Garston to Timperley Freight Railway Bridge over the A557 Widnes Eastern Bypass and terminating at Work No. 1d.

*Work No. 3b* A new road (1055 metres in length) incorporating a toll plaza and a new bridge crossing the Widnes Loops onslip commencing at the Garston to Timperley Freight Railway Bridge over the A557 and terminating at Work No. 1d.

*Work No. 4a* The temporary infilling of the St Helens Canal (290 metres in length).

*Work No. 4b* A new road and viaduct supporting the southbound carriageway of the Mersey Gateway Bridge (530 metres in length) commencing at the termination of Work No. 1d and terminating at Work No. 4e.

*Work No. 4c* A new road and viaduct supporting the northbound carriageway of the Mersey Gateway Bridge (567 metres in length) commencing at the termination of Work No. 1d and terminating at Work No. 4e.

*Work No. 4d* Temporary jetty structure commencing on the North bank of the River Mersey and extending southwards to the South bank of the River (1000 metres in length).

*Work No. 4e* A new road and cable stay bridge with a maximum of three towers and two carriageways (1000 metres in length).

*Work No. 4f* A new southbound road and viaduct (500 metres in length) with supporting structures commencing at the southernmost end of Work No. 4e and terminating at the northernmost end of Work No. 4h.

*Work No. 4g* A new northbound road and viaduct with supporting structures (500 metres in length) commencing at the southernmost end of Work No. 4e and terminating at the northernmost end of Work No. 4h.

*Work No. 4h* A new road and viaduct with supporting structures (500 metres in length) commencing at the southernmost end of Work Nos. 4f and 4g and terminating at the northernmost end of Work No. 5a.

*Work No. 4i* A new road and viaduct (464 metres in length) commencing at the southernmost end of the approach viaduct to the cable stay bridge (Works 4f and 4g) and terminating at Work No. 5h.

*Work No. 4j* A new road and viaduct (433 metres in length), commencing at that southernmost end of Work Nos. 4f and 4g and terminating at Work No. 5h.

*Work No. 5a* A new road (525 metres in length) commencing at the southernmost end of Work No. 4h and terminating at Halton Brow comprising a new road on viaduct spanning the Bridgewater Junction and Bridgewater Canal and a new road on embankment.

*Work No. 5b* A new road (395 metres in length) commencing on Bridgewater Expressway 530 metres east of the junction with Astmoor Road and terminating at Work No. 5h.

*Work No. 5c* A new road (265 metres in length) commencing at Work No. 5h and terminating on Bridgewater Expressway 630 metres east of the junction with Astmoor Road.

*Work No. 5d* A new road (370 metres in length) commencing at Work No. 5h and terminating on Daresbury Expressway 450 metres west of the Astmoor Interchange overbridge.

*Work No. 5e* A new road (410 metres in length) commencing on Daresbury Expressway 450 metres west of the Astmoor Interchange overbridge and terminating at Work No. 5h.

*Work No. 5f* A new road (400 metres in length) commencing at Work No. 5h and terminating at Halton Brow comprising a bridge crossing of the Bridgewater Canal and embankment.

*Work No. 5g* A new road (400 metres in length) commencing at Halton Brow and terminating at Work No. 5h comprising a bridge crossing of the Bridgewater Canal and embankment.

*Work No. 5h* A new road comprising a gyratory road junction commencing at Ordnance Survey Reference Point SJ 5335 8287 and proceeding in a clockwise direction to the same point.

*Work No. 6a* Temporary work (110 metres in length) comprising a temporary dock and jetties abutting the River Mersey and the Manchester Ship Canal.

SCHEDULE 2

Article 7

STREETS SUBJECT TO STREET WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Streets subject to street works</i>
Borough of Halton	<p>Speke Road - eastbound carriageway between St Michael's Road and Ditton Roundabout; carriageway surface improvements</p> <p>Speke Road - westbound carriageway between Ditton Roundabout and St Michael's Road; realigned to enable construction of new toll plaza</p> <p>Ditton Road - between Ditton Roundabout and a point approximately 280 metres to the west; widening and improvements associated with new Ditton junction and carriageway surface improvements</p> <p>Queensway - between Ditton Roundabout and a point approximately 130 metres to the south; widening and improvements associated with new Ditton junction and carriageway surface improvements</p> <p>Moor Lane South - from Ditton Roundabout to a point approximately 300 metres from Ditton Roundabout; improvements relating to Ditton Junction and new signalised crossroads with Ashley Way West and Lower House Lane and carriageway surface improvements</p> <p>Lower House Lane - between roundabout with Moor Lane South and a point approximately 30 metres to the north; improvement works relating to new signalised cross roads with Moor Lane South and carriageway improvements</p> <p>Ashley Way West - between roundabout with Moor Lane South and a point approximately 45 metres to south east; improvement works relating to new signalised cross roads with Moor Lane South and carriageway improvements</p> <p>Dock Road - from Queensway viaduct to junction with Wandsworth Way; carriageway widening and surface improvements</p> <p>Wandsworth Way - from Dock Road to a point approximately 12 metres to the north; junction improvements and carriageway surface improvements</p> <p>Queensway Link - from Waterloo Road to point approximately 130 metres to the south; carriageway widening and surface improvements</p>

Daresbury Expressway - improvement works associated with Bridgewater Junction  
 Central Expressway - from Bridgewater Junction to a point approximately 275 metres to the south; realignment of carriageway and surface improvements  
 Castlefields Avenue North - from Warrington Road to a point approximately 85 metres to the north; carriageway realigned

## SCHEDULE 3

Article 8

### STREETS TO BE STOPPED UP

#### PART 1

##### STREETS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street or part of street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New street to be substituted for it</i>
Borough of Halton	Surfaced paths to the south of A557 Widnes Eastern Bypass	Between point PS7 and points PS11 and PS13	Between point PD1 and points PD2 and PD3

#### PART 2

##### STREETS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street or part of street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>
Borough of Halton	Footpath Widnes 58 Informal paths, (not on definitive map) within the closed St Michael's Golf Course A553 Queensway Ditton Roundabout  Ditton Road Lower House Lane A557 Widnes Eastern Bypass  Catalyst Trade Park Private Roads Dock Road	Between points PS1 and PS2 Between points PS3, PS4, PS5 and PS6  Between HS1 and HS2 The entire street comprising the roundabout commencing and concluding in a clockwise direction at point HS3 Between points HS4 to HS5 Between points HS6 to HS7 Between the junction with A553 Queensway at points HS8 and HS9 and the junction with A562 Ashley Way at HS10 All those streets covered by grey shading at HS11 Part of that length of Dock



	Road between the existing limit of Queensway and the junction of Dock Road and Widnes Eastern Bypass at or about point HS12.
Footpath Widnes 60 (definitive right of way not currently accessible)	Between points PS8 and PS10
Footpath Widnes 61(definitive right of way not currently accessible)	Between points PS8 and PS9
Footpath Widnes 62 (definitive right of way not currently accessible)	Between points PS7 and PS8
Surfaced path to the south of A557 Widnes Eastern Bypass	For 63 metres southward from point PS12
Surfaced path on Astmoor Industrial Estate (not on definitive map)	Between points PS14, PS15, PS16 and PS17
Surfaced path on Astmoor Industrial Estate (not on definitive map)	Between points PS18, PS19, PS20 and PS21
Surfaced path on Astmoor Industrial Estate (not on definitive map)	Between points PS22, PS23
Goddard Road	Between points HS13 and HS14 and HS15 and HS16
Lancer Court	All that street shaded grey comprising Lancer Court at point HS17
Dalton Court	Between points HS18 and HS19
Davy Road	Between points HS20 and HS21
Chadwick Road	Between points HS22 and HS23
Surfaced path (not on definitive map) on the southbound verge of the Central Expressway	Between points PS24 and PS25
Bridgewater Expressway	Between points HS24 and HS25
Central Expressway	Between points HS26 and HS27, HS27 and HS28, HS29 and HS30, HS31 and HS32, and HS27 and HS33

## SCHEDULE 4

Article 9

### STREETS TO BE TEMPORARILY STOPPED UP

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
Borough of Halton	Cycle track to the south of St Helen's Canal (Transpennine Way)	Between TS1 and TS2 and to be temporarily diverted between points TD1, TD2, TD3 and TD4
	Surfaced path in Wigg Island Community Park (not on definitive map)	Between points TS3 and TS4 and to be temporarily diverted via points TD5, TD6 and TD7
	Surfaced path to the north of Manchester Ship Canal (not on definitive map)	Between points TS5 and TS6
	Surfaced path to the south of Manchester Ship Canal (not on definitive map)	Between points TS7 and TS8
	Astmoor Road	Between points TS9 and TS10
	Astmoor Busway	Between points TS11 and TS12
	Footpath Runcorn 16 (to the north of Bridgewater Canal)	Between points TS13 and TS14

## SCHEDULE 5

Article 10

### ACCESS TO WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Description of access</i>
Borough of Halton	Access No. A1 from Speke Road Access No. A2 from Ditton Road Access No. A3 from Ditton Road Access No. A4 from Queensway Access No. A5 from Hutchison Street Access No. A6 from Lower House Lane Access No. A7 from Moor Lane (south) Access No. A8 from Ashley Way Access No. A9 from Ditton Road Access No. A10 from Victoria Road (north side) Access No. A11 from Victoria Road (south side) Access No. A12 from Waterloo Road Access No. A13 from Queensway Access No. A14 from Queensway Access No. A15 from Widnes Eastern Bypass Access No. A16 from Astmoor Road (east side) Access No. A17 from Astmoor Road (west

side)  
Access No. A18 from Daresbury Expressway  
Access No. A19 from Bridgewater Expressway  
Access No. A20 from Castlefields Avenue  
(north side)  
Access No. A21 from Castlefields Avenue  
(south side)  
Access No. A22 from Halton Brow  
Access No. A23 from Central Expressway  
Access No. A24 from Boston Avenue  
Access No. A25 from Mason Street  
Access No. A26 from the Manchester Ship  
Canal  
Access No. A27 from the Manchester Ship  
Canal  
Access No. A28 from the River Mersey  
Access No. A29 from the River Mersey

## SCHEDULE 6

Article 24

### 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 shall 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 limiting the scope of paragraph 1, the Land Compensation Act 1973(a) shall have effect subject to the modifications set out in sub-paragraphs (2) and (3).

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

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

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

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

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(a) 1973 c. 26.

*Application of the 1965 Act*

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

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

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

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

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

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

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

- (a) a question of disputed compensation in respect of the purchase of the right would apart from this section fall to be determined by the Upper Tribunal (“the tribunal”); and
- (b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that interest and—
  - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased without material detriment to that land; or
  - (ii) where that land consists of such a park or garden, that the right cannot be purchased without seriously affecting the amenity or convenience of the house to which that land belongs,

the River Mersey (Mersey Gateway Bridge) Order 2011<sup>(a)</sup> (“the Order”) shall, in relation to that person, cease to authorise the purchase of the right and be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice shall be deemed to have been served in respect of that interest on such date as the tribunal directs.

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

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the

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(a) S.I. 2011/41.

notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”.

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

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

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

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

8. Section 20 of the 1965 Act (protection for interests of tenants at will, etc.) shall apply 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.

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

## SCHEDULE 7

Article 28

### LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> Area	<i>(2)</i> Number of land shown on land plans	<i>(3)</i> Purpose for which temporary possession may be taken	<i>(4)</i> Authorised work
Borough of Halton	2	Provision of access, for the purposes of constructing the authorised works	Work No. 1b
	3	Provision of access, for the purposes of constructing the authorised works and the provision of a temporary worksite	Work Nos. 1a, 1b, 1c
	4	For the purposes of a temporary worksite	Work Nos. 1a, 1b, 1c
	7	Provision of access,	Work Nos. 1a, 1b, 1c

(1) Area	(2) Number of land shown on land plans	(3) Purpose for which temporary possession may be taken	(4) Authorised work
		for the purposes of constructing the authorised works	
	9	Provision of access, for the purposes of constructing the authorised works and the provision of a temporary worksite	Work Nos. 1a, 1b, 1c
	10	Construction of authorised works	Work Nos. 1a, 1b, 1c
	11	Construction of authorised works	Work Nos. 1a, 1b, 1c
	16	Provision of access, for the purposes of constructing the authorised works	Work Nos. 1c, 1d, 2a, 2b
	18	Provision of access, for the purposes of constructing the authorised works	Work Nos. 1c, 1d, 2a, 2b
	22	Provision of access, for the purposes of constructing the authorised works	Work No. 2a
	23	Provision of access, for the purposes of constructing the authorised works	Work No. 2a
	24	Provision of access, for the purposes of constructing the authorised works	Work No. 2a
	25	Provision of access, for the purposes of constructing the authorised works	Work No. 2a
	26	Provision of access, for the purposes of constructing the authorised works	Work No. 2a
	34	Provision of access, for the purposes of constructing the authorised works	Work No. 2a
	35	Provision of access, for the purposes of constructing the authorised works	Work No. 2a
	55	Provision of access, for the purposes of constructing the	Work Nos. 2a, 2b

(1) Area	(2) Number of land shown on land plans	(3) Purpose for which temporary possession may be taken	(4) Authorised work
	56	authorised works Provision of access, for the purposes of constructing the authorised works and the provision of a temporary worksite	Work Nos. 2a, 2b
	57	Provision of access, for the purposes of constructing the authorised works	Work No. 2b
	63	For the purposes of a temporary worksite	Work No. 2b and works to Queensway
	64	For the purposes of a temporary worksite	Work No. 2b and works to Queensway
	65	For the purposes of a temporary worksite	Work No. 2b and works to Queensway
	66	Construction of authorised works	Work No. 2b and works to Queensway
	67	Construction of authorised works	Work No. 2b and works to Queensway
	68	For the purposes of a temporary worksite	Work No. 2b and works to Queensway
	76	For the purposes of a temporary worksite	Work Nos. 1d, 1e
	77	For the purposes of a temporary worksite	Work Nos. 1d, 1e
	78	For the purposes of a temporary worksite	Work Nos. 1d, 1e
	85	For the purposes of a temporary worksite	Work Nos. 1d, 1f
	86	For the purposes of a temporary worksite and a construction compound	Work Nos. 1d, 1f
	87	For the purposes of a temporary worksite and a construction compound	Work Nos. 1d, 1f
	153	For the purposes of a temporary worksite	Work Nos. 1d, 3a, 3b
	154	For the purposes of a temporary worksite	Work Nos. 1d, 3a, 3b
	158	For the purposes of a temporary worksite	Work Nos. 1d, 3a, 3b
	159	For the purposes of a temporary worksite	Work Nos. 1d, 3a, 3b
	166	For the purposes of a temporary worksite	Work Nos. 1d, 3a, 3b
	168	For the purposes of a temporary worksite	Work Nos. 1d, 3a, 3b

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Authorised work</i>
	171	For the purposes of a temporary worksite	Work Nos. 1d, 3a, 3b
	172	For the purposes of a temporary worksite	Work Nos. 1d, 3a, 3b
	173	For the purposes of a temporary worksite	Work Nos. 1d, 3a, 3b
	174	For the purposes of a temporary worksite	Work Nos. 1d, 3a, 3b
	188	Construction of authorised works	Work Nos. 3a, 3b
	191	Construction of authorised works	Work Nos. 3a, 3b
	192	For the purposes of a temporary worksite	Work Nos. 3a, 3b
	206	For the purposes of a temporary worksite	Work Nos. 1d, 4a, 4b, 4c
	210	For the purposes of a temporary worksite	Work Nos. 4a, 4b, 4c
	225	For the purposes of a temporary worksite	Work Nos. 4b, 4c, 4d
	226	For the purposes of a temporary worksite	Work Nos. 4b, 4c, 4d, 4e
	228	For the purposes of a temporary worksite	Work Nos. 4d, 4e
	229	For the purposes of a temporary worksite	Work Nos. 4d, 4e
	231	For the purposes of a temporary worksite	Work Nos. 4d, 4e
	232	For the purposes of a temporary worksite	Work Nos. 4d, 4e, 4f, 4g
	234	For the purposes of a temporary worksite	Work Nos. 4d, 4e, 4f, 4g
	240	Provision of access, for the purposes of constructing the authorised works and the provision of a temporary worksite	Work Nos. 4f, 4g
	255	For the purposes of a temporary worksite and a construction compound	Work Nos. 4h, 4i, 4j
	257	For the purposes of a temporary worksite	Work Nos. 4h, 4i, 4j
	258	For the purposes of a temporary worksite	Work Nos. 4h, 4i, 4j
	260	For the purposes of a temporary worksite and a construction compound	Work Nos. 4h, 4i, 4j
	266	For the purposes of a	Work Nos. 4h, 4i, 4j



(1) Area	(2) Number of land shown on land plans	(3) Purpose for which temporary possession may be taken	(4) Authorised work
		temporary worksite	
	267	For the purposes of a temporary worksite	Work Nos. 4h, 4i, 4j
	270	For the purposes of a temporary worksite	Work Nos. 4h, 4i, 4j
	271	For the purposes of a temporary worksite	Work Nos. 4h, 4i, 4j
	273	For the purposes of a temporary worksite	Work Nos. 4h, 4i, 4j
	276	For the purposes of a temporary worksite and a construction compound	Work Nos. 4h, 4i, 4j
	277	For the purposes of a temporary worksite and a construction compound	Work Nos. 4h, 4i, 4j
	278	For the purposes of a temporary worksite and a construction compound	Work Nos. 4h, 4i, 4j
	282	For the purposes of a temporary worksite	Work Nos. 4h, 4i, 4j
	283	For the purposes of a temporary worksite	Work Nos. 4h, 4i, 4j
	285	For the purposes of a temporary worksite and a construction compound	Work Nos. 4h, 4i, 4j
	286	For the purposes of a temporary worksite	Work Nos. 4h, 4i, 4j
	290	For the purposes of a temporary worksite	Work Nos. 4h, 4i, 4j
	291	For the purposes of a temporary worksite	Work Nos. 4h, 4i, 4j
	293	For the purposes of a temporary worksite	Work Nos. 4h, 4i, 4j, 5a, 5b, 5h
	298	For the purposes of a temporary worksite	Work Nos. 4h, 4i, 4j
	299	For the purposes of a temporary worksite	Work Nos. 4h, 4i, 4j
	300	For the purposes of a temporary worksite	Work Nos. 4h, 4i, 4j
	307	For the purposes of a temporary worksite	Work Nos. 4i, 5d, 5e
	314	For the purposes of a temporary worksite	Work Nos. 5d, 5e
	316	For the purposes of a temporary worksite	Work Nos. 5d, 5e
	317	For the purposes of a temporary worksite	Work Nos. 5d, 5e

(1) <i>Area</i>	(2) <i>Number of land shown on land plans</i>	(3) <i>Purpose for which temporary possession may be taken</i>	(4) <i>Authorised work</i>
	319	For the purposes of a temporary worksite	Work Nos. 4j, 5a, 5b, 5c
	320	For the purposes of a temporary worksite	Work Nos. 4j, 5a, 5b, 5c
	322	For the purposes of a temporary worksite	Work Nos. 5b, 5c
	323	For the purposes of a temporary worksite	Work Nos. 5b, 5c, 5h
	324	For the purposes of a temporary worksite	Work Nos. 5b, 5c, 5h
	328	For the purposes of a temporary worksite	Work Nos. 5a, 5e, 5f, 5h
	329	For the purposes of a temporary worksite	Work Nos. 5a, 5e, 5f, 5h
	334	For the purposes of a temporary worksite	Work Nos. 5a, 5f, 5g
	335	For the purposes of a temporary worksite	Work Nos. 5a, 5f, 5g
	336	For the purposes of a temporary worksite	Work Nos. 5a, 5f, 5g
	341	Provision of access, for the purposes of constructing the authorised works and the provision of a temporary worksite	Work Nos. 5a, 5f, 5g

## SCHEDULE 8

Article 51

### PROTECTION OF NAVIGATION

**1.** In this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “constructed” has a corresponding meaning; and

“plans” includes sections, drawings, particulars and schedules of construction.

#### *Tidal works*

**2.**—(1) Unless its construction has commenced within 5 years of this Order coming into force no tidal work shall be constructed, replaced or re-laid except in accordance with plans approved by the Secretary of State and subject to any conditions and restrictions imposed by the Secretary of State before the work is begun.

(2) If a tidal work is constructed, replaced or re-laid in contravention of this paragraph or of any condition or restriction imposed under this paragraph—

(a) the Secretary of State may by notice in writing require the undertaker at its own expense to take whatever steps the Secretary of State considers necessary to remedy the contravention;

(b) without limiting the scope of sub-paragraph (a), the steps in question may include steps to—

- (i) alter, replace or re-lay any tidal work; or
- (ii) remove the tidal work or any part of it, and restore the site to its former condition or as near to its former condition as is acceptable to the Secretary of State;
- (c) any notice served by the Secretary of State under sub-paragraph (a) shall specify the period within which the undertaker shall comply with the requirements of that notice and may specify different periods for the taking of different steps; and
- (d) where the undertaker fails to comply with the requirements of a notice served under sub-paragraph (a) within the period specified in that notice, the Secretary of State may execute the works required by the notice.

(3) Where it appears to the Secretary of State to be urgently necessary to do so, the Secretary of State may remove the tidal work, or any part of it, or restore the site to its former condition or as near to its former condition as the Secretary of State considers appropriate.

(4) The Secretary of State may, if the Secretary of State considers it expedient, order a survey and examination of any site on which it is proposed to execute a tidal work.

*Provision against danger to navigation*

3.—(1) In case of damage to or destruction of a tidal work or any part of a tidal work the undertaker shall as soon as reasonably practicable notify Trinity House and shall lay down such buoys, exhibit such lights and take such steps for the prevention of danger to navigation as Trinity House shall from time to time direct.

(2) If the undertaker fails to notify Trinity House as required by this paragraph or to comply in any respect with any requirements of a direction given under this paragraph, it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

*Abandonment, etc. of structure*

4.—(1) Where a tidal work is abandoned, or allowed to fall into decay, the Secretary of State may by notice in writing require the undertaker at its own expense—

- (a) to repair and restore the work, or any part of it; or
- (b) to remove the work and restore the site to its former condition or so near its former condition as is acceptable to the Secretary of State.

(2) Where—

- (a) a work erected under this Order, part of which is a tidal work, is abandoned or allowed to fall into decay; and
- (b) the part of the work on or over land above the level of mean high-water springs is in such a condition as to interfere, or cause reasonable apprehension that it may interfere, with the right of navigation or any public rights over the foreshore,

the Secretary of State may include that part of the work, or any portion of it, in any notice under sub-paragraph (1).

(3) If, at the end of the period of 28 days from the date when notice is served on the undertaker under sub-paragraph (1), it has failed to begin taking steps to comply with the requirements of the notice or, after beginning, has failed to make reasonably expeditious progress towards their implementation, the Secretary of State may execute the works specified in the notice.

*Surveys, etc.*

5. Having concluded that it is expedient to do so the Secretary of State may order a survey and examination of any tidal work.

*Lights on tidal works during construction*

6.—(1) The undertaker shall, at or near to a tidal work during the whole time of the construction, extension, enlargement, replacement or relaying of that tidal work, exhibit from sunset to sunrise every night such lights, if any, and take such steps for the prevention of danger to navigation as the Secretary of State or Trinity House, or failing agreement between them, as the Secretary of State shall from time to time direct.

(2) If the undertaker fails to comply in any respect with any requirements of a direction given under this paragraph, it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

*Permanent lights on tidal works*

7.—(1) After completion of a tidal work the undertaker shall exhibit at the outer extremity of that tidal work from sunset to sunrise every night such lights, if any, and take such other steps, if any, for the prevention of danger to navigation as Trinity House shall from time to time direct.

(2) If the undertaker fails to comply in any respect with any requirements of a direction given under this paragraph, it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

*Defence of due diligence*

8.—(1) In proceedings for an offence under paragraphs 3, 6 and 7 it shall be a defence for the undertaker to show that it took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(2) If in any case the defence provided by sub-paragraph (1) involves the allegation that the commission of the offence was due to the act or default of another person, the undertaker shall not, without the leave of the court, be entitled to rely on the defence unless, at least 7 clear days before the hearing, it has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of the other person as was then in its possession.

*Trinity House*

9.—(1) Where the undertaker is required to give notice of any matter to Trinity House in accordance with this Schedule it shall give notice of that matter to MDHC and MSCC at the same time.

(2) When Trinity House does not give any direction under this Schedule MDHC (in the case of the River Mersey) or MSCC (in the case of the Manchester Ship Canal) may give a direction in its stead provided that no such direction may conflict with any direction of Trinity House.

(3) Where MDHC or MSCC gives a direction as permitted by this paragraph it shall take effect as if given by Trinity House.

(4) In this paragraph—

“MDHC” means the Mersey Docks and Harbour Company; and

“MSCC” means the Manchester Ship Canal Company.

*Expenses*

10. The Secretary of State shall be entitled to recover from the undertaker any expenditure incurred by the Secretary of State under sub-paragraph 2(2)(d) or 2(3) or 4(3) or on a survey and examination under sub-paragraph 2(4) or paragraph 5.

## PROVISIONS RELATING TO STATUTORY UNDERTAKERS, ETC.

*Apparatus of statutory undertakers, etc., on land acquired*

1.—(1) Sections 271 to 274 of the 1990 Act (power to extinguish rights of statutory undertakers, etc. and power of statutory undertakers, etc. to remove or re-site apparatus) shall apply in relation to any land acquired or appropriated by the undertaker 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 sections 279(2) to (4), 280 and 282, which provide for the payment of compensation) shall 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 shall be entitled to recover from the undertaker 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) shall 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,

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

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

(6) In this paragraph—

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

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

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

2.—(1) Where a street is stopped up under article 8 (stopping up of streets), any statutory utility whose apparatus is under, in, upon, along or across the street shall have 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 article 8 (stopping up of streets), any statutory utility whose apparatus is under, in, upon, over, along or across the street may, and if reasonably requested to do so by the undertaker shall—

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(a) 2003 c. 21.

(b) 1980 c. 66.

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the 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.

(3) Subject to the following provisions of this paragraph, the undertaker shall pay to any statutory utility an amount equal to the cost reasonably incurred by the 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 the undertaker, or, in default of agreement, is not determined by 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) shall 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 shall not 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 shall 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)) shall, 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 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) shall not apply where the authorised works constitute major highway works for the purposes of Part 3 of the 1991 Act, but instead—

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

(8) 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(6).

*Railway and navigation undertakings*

3.—(1) Subject to the following provisions of this paragraph, the powers under article 7 (power to execute street works) to break up or open a street shall not be 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 or tramway undertakers or a navigation authority except with the consent of the undertakers or authority.

(2) Sub-paragraph (1) shall 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 shall not be unreasonably withheld.

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

## SCHEDULE 10

Article 56

### PROTECTIVE PROVISIONS

#### PART 1

##### PROTECTION OF THE MANCHESTER SHIP CANAL COMPANY

1.—(1) For the protection of the Manchester Ship Canal Company the following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and MSCC, have effect.

(2) In this Part of this Schedule—

“the Bridgewater Canal” means the Bridgewater Canal owned or managed by MSCC or the Bridgewater Canal Company Limited, and includes any works connected with the Bridgewater Canal for the maintenance or operation of which MSCC is responsible and lands held or used by MSCC for the purposes of the Bridgewater Canal;

“the Canals” means the Bridgewater Canal and the Ship Canal;

“construction”, in relation to any specified work or protective work, includes execution, placing, altering, replacing, relaying and removal, and “construct” and “constructed” have corresponding meanings;

“deputy harbour master” means the deputy harbour master appointed by MSCC for the purpose in question;

“detriment” means any physical damage to the Canals wholly or partly caused by the specified works which affects the stability, structure and safety of the Canals and, without limiting the scope of that meaning, includes—

- (a) the erosion of the bed, banks or walls of the Canals, or the impairment of the stability of any works or lands forming part of the Canals;
- (b) damage to the wall of the Ship Canal caused by excessive weight being placed on the Ship Canal wall;
- (c) the silting of the Canals or the deposit of materials in the Canals so as to damage the Canals;
- (d) the pollution of the Canals; and
- (e) any alteration in the water level of the Canals, or interference with the supply of water to the Canals, or drainage from the Canals;

“the engineer” means an engineer (whether an employee of MSCC or external consultant) appointed by MSCC for the purpose in question;

“exclusion zone” means an area of land extending 20 metres landwards from either bank of the Ship Canal and an area of land extending 3 metres landwards from either bank of the Bridgewater Canal;

“MSCC” means the Manchester Ship Canal Company and its statutory successors;

“plans” includes sections, drawings, specifications, calculations, soil reports, descriptions (including descriptions of methods of construction), risk assessments and method statements but shall not include the design and appearance of the specified works;

“protective work” means a work which is reasonably necessary to be carried out to minimise or prevent detriment constructed under sub-paragraph 5(3)(a);

“the Ship Canal” means the Manchester Ship Canal owned and managed by MSCC, and includes any works connected with the Ship Canal for the maintenance or operation of which MSCC is responsible and lands held or used by MSCC for the purposes of the Ship Canal;

“specified work” means so much of the authorised works as is situated upon, across, under, over or within 15 metres of, or may in any way affect, the Canals or either of them; and

“weight limit” means the relevant weight limit for any section of the wall of the Ship Canal that may be affected by any specified work or protective work such weight limit to be approved by the engineer in accordance with the provisions of paragraph 5.

2. The undertaker shall not under the powers conferred by this Order acquire compulsorily any land of MSCC or any easement or other right over such land, other than such land or easements or other rights over such land, as is reasonably necessary for, or in connection with, the construction, maintenance or operation of the works authorised by this Order.

3. The undertaker shall not under the powers conferred by this Order construct in the exclusion zone any bridge piers (and their foundations) to support an approach viaduct to the new bridge except with the written agreement of MSCC which may be withheld by MSCC at its absolute discretion.

4. Where so required by the engineer for the purpose of ensuring the safety of the Canals the undertaker shall, to the reasonable satisfaction of the engineer, fence off any specified work or protective work or take such steps as the engineer may reasonably require to be taken for the purpose of separating a specified work or a protective work from the Canals, whether on a temporary or permanent basis or both.

5.—(1) The undertaker shall, before commencing construction of any specified work, including any temporary works, supply to MSCC proper and sufficient plans of that work and such further particulars available to it as MSCC may within 14 days of the submission of the plans reasonably require for the reasonable approval of the engineer and shall not commence the construction of any specified work except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) shall not be unreasonably withheld or delayed, and if within 42 days after such plans (including any other particulars reasonably required under sub-paragraph (1)) have been supplied to MSCC the engineer has not intimated disapproval of those plans and the grounds of disapproval the engineer shall be deemed to have approved the plans as submitted.

(3) When signifying approval of the plans the engineer may specify—

(a) any protective work to be carried out before the commencement of a specified work (whether temporary or permanent) that may be reasonably required to prevent detriment; and

(b) such other requirements as may be reasonably necessary to prevent detriment but not involving alteration to the basic design of the specified works,

and such protective work shall be constructed by the undertaker or (if the undertaker so elects) MSCC without unnecessary delay and the undertaker shall not commence the construction of any



specified work until the engineer has notified the undertaker that the protective work has been completed to the engineer's reasonable satisfaction.

(4) The approval of the engineer under sub-paragraph (3) shall not be unreasonably withheld or delayed, and if by the end of the period of 14 days beginning with the date on which the engineer is notified of the completion of such protective work the engineer has not intimated disapproval and the grounds of disapproval the engineer shall be deemed to have approved the protective work.

(5) MSCC shall at all times afford reasonable facilities to the undertaker and its agents for access to any protective works carried out by MSCC under this paragraph during their construction and shall supply the undertaker with such information as it may reasonably require with regard to such protective works or the method of constructing them.

6. The undertaker shall not impede, obstruct or interfere with, as far as reasonably practicable, the free and uninterrupted and safe use of the Canals or the vessels on the Canals except to the extent that the obstruction or interference has otherwise been agreed by MSCC.

7. The undertaker shall provide and maintain at its own expense in the vicinity of any specified work or protective work such temporary lighting from sunset to sunrise or other periods of adverse visibility and such signal lights for the control of navigation as the deputy harbour master may reasonably require during the construction or failure of the specified work or protective work.

8.—(1) Any specified work shall, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled by arbitration and with any requirements made under sub-paragraph 5(3)(b);
- (b) under the supervision (if given), and in the case of any specified work which directly and physically affects the Canals, to the reasonable satisfaction of the engineer;
- (c) in such a manner as to cause as little detriment as is reasonably practicable to the Canals;
- (d) in such a manner as to cause no detriment to the walls of the Canals;
- (e) so far as is reasonably practicable, so as not to interfere with, delay or obstruct the safe passage of vessels using the Canals except to the extent that such interference, delay or obstruction has otherwise been agreed by MSCC; and
- (f) in such a manner as to cause as little inconvenience as is reasonably practicable to MSCC, its officers and agents.

(2) Nothing in this Order shall authorise the undertaker to make or maintain any permanent works in or over the Canals so as to impede or prevent (whether by reducing the headroom or depth of water available for vessels, or the width of the Canals or otherwise) the passage of any vessel along the Canals (unless otherwise agreed in writing by MSCC) such that—

- (a) the minimum permanent vertical clearance over the Ship Canal will be maintained at all times at 28.63 metres Above Ordnance Datum and the existing permanent minimum width of the Ship Canal will be maintained at all times at 40 metres; and
- (b) the minimum permanent vertical clearance over the Bridgewater Canal will be maintained at all times at 5 metres over the normal water level of 25.260 metres Above Ordnance Datum and the existing permanent minimum width of the Bridgewater Canal will be maintained at all times at 5 metres.

(3) Nothing in this Order shall authorise the undertaker to—

- (a) construct or maintain any specified work or protective work which would result in the weight limit of the Ship Canal wall being exceeded; or
- (b) use the Ship Canal wall as a load bearing wall or structure for any specified work or protective work.

(4) Nothing in this Order shall authorise the undertaker to construct any specified work or make or maintain any permanent works in the Bridgewater Canal which would impede the free-flow of water in the Bridgewater Canal.

(5) Following the completion of the construction of any specified work the undertaker shall restore the Canals to a condition no less satisfactory than their condition immediately prior to the commencement of those works subject to the presence of the new bridge.

**9.—(1)** The undertaker shall not in the course of constructing any specified work or protective work or otherwise in connection with such works do or permit anything which may result in the deposit of any polluting materials on, in or over the Canals and shall take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph.

(2) Nothing in article 14 (discharge of water) shall authorise the undertaker to discharge (directly or indirectly) surface drainage water into the Canals save that with the written consent of MSCC the undertaker may discharge water directly into the Ship Canal only.

(3) The undertaker shall not in the course of constructing any specified work or protective work or otherwise in connection with such works do or permit anything which may result in the deposit of any other materials in the Canals and shall take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph save that with the written consent of MSCC the undertaker may deposit any other materials into the Ship Canal only.

(4) Any consent of MSCC required under this paragraph shall not be unreasonably withheld or delayed and may be given subject to such terms and conditions as MSCC may reasonably require including—

- (a) in the case of a discharge of water into the Ship Canal, concerning the reimbursement by the undertaker of expenses incurred by MSCC in disposing of the water so discharged, being expenses which MSCC would not have incurred but for the discharge;
- (b) in the case of a deposit of any other materials, so as to ensure that the use of the Ship Canal is not obstructed or rendered less safe and the reimbursement by the undertaker of additional expenses incurred by MSCC in dredging the Ship Canal, being expenses which MSCC would not have incurred but for the deposit of other materials.

**10.—(1)** The undertaker shall at all reasonable times on being given reasonable notice (except in cases of emergency) allow reasonable facilities to the engineer for access to inspect any specified work during its construction.

(2) The undertaker shall supply the engineer with all such information as the engineer may reasonably require with regard to any specified work or the method of constructing it.

**11.—(1)** If any reasonable alterations or additions, either permanent or temporary, to the Canals are necessary in consequence of the construction of the specified work in order to avoid detriment and MSCC gives to the undertaker reasonable notice (being not less than 28 days) of its intention to carry out such alterations or additions (which shall be specified in the notice), and takes into account any reasonable representations the undertaker may make to the notice within 21 days of receipt of the notice, the undertaker shall pay to MSCC, provided that 28 days' notice has been given to the undertaker, the cost of those alterations or additions reasonably incurred including, in respect of permanent alterations and additions, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by MSCC in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If the cost of maintaining, working or renewing the Canals is reduced as a consequence of any such alterations or additions referred to in sub-paragraph (1) a capitalised sum representing such saving shall be set off against any sum payable by the undertaker to MSCC under sub-paragraph (1).

**12.—(1)** The undertaker shall, upon completion of any part of a specified work and after the purpose of any temporary works has been accomplished, remove as soon as practicable any temporary works constructed and materials for temporary works placed in, on or over the Canals in connection with that part of the specified work.

(2) All temporary works shall be removed to the reasonable satisfaction of the engineer and in such a way as causes as little detriment or interference as reasonably practicable with, or delay or interruption to, the safe passage of vessels along the Canals.

(3) In the event of any detriment to the Canals or interference with, or delay or interruption to, any vessels on the Canals that is caused by the undertaker's failure to remove any such temporary works, the undertaker shall immediately make good such damage and pay to MSCC the costs and expenses to which it may be put and the compensation for any loss which it may suffer by reason of such detriment, interference, delay or interruption.

(4) In the event of the undertaker failing to remove the temporary works within a reasonable period after receiving notice from MSCC, MSCC may remove the same and charge the undertaker with the reasonable costs and expenses reasonably incurred as a result.

**13.—**(1) Following the completion of any specified work and any protective work the undertaker and MSCC shall co-operate with each other on the development of a maintenance schedule for the new bridge to reflect, where possible, the maintenance requirements of the undertaker with regards to the new bridge and the operational requirements of MSCC in managing the Ship Canal.

(2) The undertaker and the deputy harbour master shall jointly review the maintenance schedule on a twice yearly basis (on a date to be agreed between the parties) and, acting reasonably, shall agree what reasonable actions (if any) need to be taken to revise the maintenance schedule.

(3) The undertaker shall, before placing any temporary structure or apparatus over the Ship Canal required in connection with the maintenance or repair of the new bridge or renewal of a specified work, comply with the reasonable requirements of MSCC, such requirements to include—

- (a) the undertaker providing MSCC with 42 days' written notice of this requirement so that, in particular, MSCC may bring these works to the attention of users of the Ship Canal;
- (b) receiving approval from the deputy harbour master in accordance with the maintenance schedule, which approval shall not be unreasonably withheld or delayed in any event; and
- (c) any temporary structure or apparatus being capable of being moved within 45 minutes of the undertaker being instructed to do so by the deputy harbour master to allow the safe movement of vessels along the Ship Canal.

(4) In the case of repair work carried out in an emergency the undertaker shall only be required to give such notice to the deputy harbour master as may be reasonably practicable in the circumstances.

**14.** If as a result of the construction of any specified work or protective work any part of the towing path or access way beside the Bridgewater Canal, or any public right of way giving access to the Bridgewater Canal, is temporarily closed to pedestrians or cyclists, the undertaker shall provide a substitute path or paths for such time as the closure continues to the satisfaction of the relevant highway authority and MSCC and shall reinstate, on completion of the specified work or protective work, to the same standard and to the satisfaction of the relevant highway authority and MSCC the towing path or access way beside the Bridgewater Canal (such towing path or access way to be of no less width or benefit than the towing path or access way replaced).

**15.** If at any time after the completion of a specified work, not being a work vested in MSCC, MSCC give notice to the undertaker informing it that the state of maintenance of the specified work appears to be such that the specified work is causing or is likely to cause detriment, the undertaker shall, on receipt of such notice, take such steps as may be reasonably necessary to put the specified work in such state of maintenance as not to cause such detriment and if the undertaker fails to do so, MSCC may make and do in and upon the land of the undertaker or MSCC all such works to put the specified work in such state of maintenance as before and the cost, expenses and losses incurred by MSCC in so doing shall be repaid to MSCC by the undertaker.

**16.** Any reasonable and proper additional expenses not otherwise provided for in this Part of this Schedule which MSCC may incur in maintaining the Canals under any powers existing at the making of this Order by reason of the existence of a specified work shall, provided that 42 days' notice of the commencement of such maintenance has been given to the undertaker, be repaid by the undertaker to MSCC.

17. Before providing any illumination or illuminated traffic sign on or in connection with the specified work or in the vicinity of the Canals, the undertaker shall consult with MSCC and comply with MSCC's reasonable requirements in regard to such lighting with a view to ensuring that—

- (a) appropriate navigation lighting will be placed on the new bridge; and
- (b) any bridge illuminations will not be directed upstream or downstream into the path of oncoming vessels on the Canals to ensure that such illumination or illuminated signs can not be confused with any lights or lighting used for controlling, directing or securing the safety of vessels on the Canals.

18.—(1) If any canal work is abandoned, and is in such a condition that it is, or is likely to become, a danger to or to interfere with navigation, MSCC may by notice in writing require the undertaker to take such reasonable steps as may be specified in the notice to remove the work and (to such extent as MSCC reasonably requires) to restore the site to its former condition.

(2) If any canal work is in such condition that it is, or is likely to become, a danger to or to interfere with navigation, MSCC may by notice in writing require the undertaker to take such reasonable steps as may be specified in the notice—

- (a) to repair and restore the work or part of it; or
- (b) if the undertaker so elects, to remove the work and (to such extent as MSCC reasonably requires) to restore the site to its former condition.

(3) If—

- (a) a work which consists of a canal work and a non-canal work is abandoned or falls into decay; and
- (b) the non-canal work is in such a condition as to interfere with the right of navigation in the Canals or as to interfere with the rights of access or use of land adjacent to the Canals,

MSCC may include the non-canal work, or any part of it, in any notice under this paragraph.

(4) If after such reasonable period as may be specified in a notice under this paragraph the undertaker has failed to begin taking steps to comply with the requirements of the notice or after beginning has failed to make reasonably expeditious progress towards their implementation, MSCC may carry out the works specified in the notice and any costs incurred by MSCC in so doing shall be recoverable from the undertaker.

(5) In this paragraph “canal work” means so much of any specified work or any other work of which the undertaker is in possession under the powers conferred by this Order as is in or over the Canals and “non-canal work” means so much of any such work as is not in or over the Canals.

19. The undertaker shall repay to MSCC all costs, charges and expenses reasonably and properly incurred by MSCC—

- (a) in constructing any protective work under the provisions of paragraph (5)(3)(a) including, in respect of any permanent protective work, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the employment of any inspectors, watchguards and other persons whom it is reasonably necessary to appoint for inspecting, watching and lighting any part of the Canals affected by any specified work or protective work and for preventing as far as may be practicable all interference, obstruction, danger or accident arising from the construction, maintenance, renewal, repair or failure of the specified work or any protective work;
- (c) in respect of any special navigation or traffic procedures resulting from any restrictions which are necessary as a result of the construction, maintenance, renewal, repair or failure of the specified work and which may in the reasonable opinion of the engineer be required to be imposed or from the suspension of navigation or traffic which may be necessary for the same reasons;
- (d) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of any specified work or any protective work; and

(e) in bringing the specified work or any protective work to the notice of users of the Canals.

**20.**—(1) If any detriment to the Canals or any interference with, or delay or obstruction to, any vessels on the Canals is caused by, or arises as a result of, the construction or failure of any specified work or protective work if carried out by the undertaker, the undertaker or (if MSCC so elects) MSCC, but at the undertaker's expense, shall immediately make good such detriment and the undertaker shall on demand pay to MSCC all reasonable expenses to which MSCC may be put, and compensation for any loss which MSCC may sustain, in making good or otherwise by reason of any such detriment, interference, delay or obstruction.

(2) The undertaker shall be responsible for and make good to MSCC all claims, demands, proceedings, costs, charges, damages, expenses and losses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by MSCC—

- (a) by reason of the construction or failure of any specified work or a protective work;
- (b) by reason of any planned closure of the Canals, as a result of the construction or failure of any specified work or a protective work, or of any closure which is not in accordance with the provisions of this Part of this Schedule;
- (c) by reason of any planned closure of the Canals over-running, as a result of the construction or failure of any specified work or a protective work; and
- (d) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction of any specified work or of a protective work,

and subject to sub-paragraph (4) the undertaker shall effectively indemnify and hold harmless MSCC from and against all charges, claims, demands, expenses and liabilities arising out of any of the matters referred to in paragraphs (a), (b), (c) and (d).

(3) Nothing in this paragraph shall impose any liability on the undertaker with respect to any losses, costs, charges, damages, expenses, claims or demand referred to in sub-paragraph (2) to the extent that they are attributable to negligence on the part of MSCC or of any person in their employ or their contractors or agents.

(4) The fact that any act or thing may have been done by MSCC on behalf of the undertaker or in accordance with any requirements of the engineer or in accordance with plans approved by the engineer or under the engineer's supervision or awards of an arbitrator shall not (if it was done without negligence on the part of MSCC or any person in its employ or its contractor or agents) excuse the undertaker from any liability under the provisions of this paragraph.

(5) MSCC shall give to the undertaker reasonable notice of any such claim or demand and no settlement or compromise of any such claim or demand shall be made without the prior consent in writing of the undertaker (which shall not be unreasonably withheld) which, if it notifies MSCC that it desires to do so, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand provided that no settlement or compromise of any such claim or demand shall be made without the consent of MSCC (which shall not be unreasonably withheld). If consent is not given by the undertaker, MSCC shall diligently defend such claim or demand.

**21.** Where under any provision of this Part of this Schedule MSCC or the undertaker (as the case may be) is entitled to a capitalised sum, it shall provide such details of the formula by which the sum is calculated as may reasonably be requested by the party required to pay the sum.

**22.** Except as provided by this Order, nothing in this Order shall prejudice or derogate from the estates, rights, interests, privileges, liberties or franchises of MSCC or alter or diminish any power, authority or jurisdiction vested in MSCC at the making of this Order.

**23.** Any differences arising between the undertaker and MSCC under this Part of this Schedule (other than a difference as to the meaning or construction of this Part of this Schedule) shall be referred to and settled by arbitration in accordance with article 62 (arbitration).

## PART 2

### PROTECTION OF THE MERSEY DOCKS AND HARBOUR COMPANY

**24.**—(1) For the protection of the Mersey Docks and Harbour Company the following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and MDHC, have effect.

(2) In this Part of this Schedule—

“construction” includes execution, placing, altering, replacing, relaying and removal, and “construct” and “constructed” shall have corresponding meanings;

“IALA” means International Association of Lighthouse Authorities;

“MDHC” means the Mersey Docks and Harbour Company (in its capacity as the navigation authority for the River Mersey);

“specified work” means so much of the authorised works as is constructed in, on, over or under so much of the River Mersey as is within the limits of the Mersey Docks and Harbour Company (as defined in section 2 of the Mersey Docks and Harbour Act 1971(a)), or involves cutting its banks and walls; and

“the River” means the River Mersey.

**25.** Before commencing construction or maintenance of any specified work associated with the construction of the new bridge or ongoing maintenance of the new bridge post construction of the specified work associated with the construction of the new bridge, the undertaker shall give to MDHC 56 days’ written notice before construction equipment or temporary structures are placed in the River.

**26.**—(1) The undertaker shall ensure, during the whole period of the construction of the specified work associated with the construction of the new bridge, that any temporary structures required for the construction of the three towers to support the new bridge will be lit at all times in accordance with IALA requirements.

(2) The undertaker shall ensure that, after construction, the three towers supporting the new bridge will be lit at all times in accordance with IALA requirements.

**27.**—(1) If any specified work is abandoned or falls into decay, MDHC may by notice in writing require the undertaker either to repair or to restore the specified work, or any part of it, or to remove the specified work and restore the site of that work to its condition prior to the construction of the specified work, to such an extent and to such limits as MDHC thinks proper acting reasonably.

(2) If a work consisting partly of a specified work and partly of works on or over land above the level of high-water spring tides is abandoned or falls into decay and that part of the works on or over land above the level of high-water spring tides is in such a condition as to interfere or cause reasonable apprehension that it may interfere with navigation on the River or other public rights over the foreshore, MDHC may include that part of the works or any portion in any notice under sub-paragraph (1).

(3) If on the expiration of such reasonable period as may be specified in a notice under sub-paragraph (1) the work specified has not been completed to the satisfaction of MDHC, MDHC may undertake that work and any expenditure reasonably incurred by it in doing so shall be recoverable from the undertaker.

**28.** Any differences arising between the undertaker and MDHC under this Part of this Schedule (other than a difference as to the meaning or construction of this Part of this Schedule) shall be referred to and settled by arbitration in accordance with article 62 (arbitration).

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(a) 1971 c. lvii.

## PART 3

### PROTECTION FOR THE ENVIRONMENT AGENCY

#### *General*

29. For the protection of the Agency, the following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and the Agency, have effect.

#### *Interpretation*

30. In this Part of this Schedule—

“accumulation” means any accumulation of silt or other material;

“the Agency” means the Environment Agency;

“completion” in relation to a work means the date on which it is brought into use;

“construction” includes execution, placing, altering, replacing, relaying and removal and “construct” and “constructed” shall have corresponding meanings;

“drainage work” means any watercourse and any bank, wall, embankment of the River Mersey or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring, and includes any land which, taking account of flood defences, is expected to provide flood storage capacity for any watercourse at intervals not less frequent than—

(a) in the case of areas providing fluvial flood storage, once in 100 years; and

(b) in the case of areas providing tidal or coastal flood storage, once in 200 years;

“erosion” means any erosion of the bed or shore of the sea or the bed or banks of the River Mersey;

“excluded work” means Work Numbers 1a, 1b, 1c, 1d, 1e, 1f, 2a, 2b, 3a, 3b, 4h, 4i, 4j, 5a, 5b, 5c, 5d, 5e, 5f, 5g and 5h;

“the fishery” means the River Mersey and fish in, or migrating to or from, the River Mersey and the spawn, habitat or food of such fish;

“plans” includes sections, drawings, specifications, method statements and other such particulars;

“River Mersey” means the River Mersey and its tributaries within the Order limits;

“specified work” means so much of any permanent or temporary work or operation authorised by this Order (including, for the avoidance of doubt, any dredging and any geotechnical investigations that may be undertaken) as is in, on, under, over or within 16 metres of a drainage work or is otherwise likely to—

(c) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;

(d) affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;

(e) cause obstruction to the free passage of fish or damage to any fishery; or

(f) affect the conservation, distribution or use of water resources;

and reference to protection of or damage to a drainage work includes reference to the protection of or damage to the drainage work as a natural resource or in respect of the effects of that drainage work on the environment.

#### *Plan approval*

31.—(1) Before beginning to construct any specified work other than an excluded work, the undertaker shall submit to the Agency plans of the work and such further particulars available to it as the Agency may within 28 days of the submission of the plans reasonably require.

(2) Any such specified work other than an excluded work shall not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 42.

(3) Any approval of the Agency required under this paragraph—

- (a) shall not be unreasonably withheld;
- (b) shall be deemed to have been given if it is neither given nor refused in writing and, in the case of a refusal, accompanied by a statement of the grounds for refusal, within 2 months of the submission of the plans for approval; and
- (c) may be given subject to such reasonable requirements as the Agency may impose—
  - (i) for the protection of any drainage work;
  - (ii) for the protection of the fishery;
  - (iii) for the protection of water resources;
  - (iv) for the prevention of flooding;
  - (v) for the prevention of water pollution; or
  - (vi) for the discharge of its environmental and recreational duties.

**32.** Without limiting the scope of paragraph 31, the requirements which the Agency may make under that paragraph include—

- (a) conditions as to the time and the manner in which any other work or operation is to be carried out;
- (b) conditions requiring the undertaker at its own expense—
  - (i) to provide or maintain means of access for the Agency;
  - (ii) 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 to safeguard any drainage work against damage or 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;
  - (iii) to monitor accumulation, erosion or alterations of the tidal flow arising during the construction, or for 5 years following the completion, of the specified works; and
  - (iv) to provide, maintain and operate arrangements for dealing with any pollution incidents which may occur during and as a result of the construction of the specified works.

*Construction of works*

**33.—**(1) Subject to sub-paragraph (2), any specified work other than an excluded work, and all protective works required by the Agency under paragraph 32, shall be constructed—

- (a) within such period (if any) as the Agency may approve at the time of approval or upon an application by the undertaker subsequently (such approval not to be unreasonably withheld);
- (b) in accordance with the plans approved or deemed to have been approved or settled under this Part of this Schedule; and
- (c) to the reasonable satisfaction of the Agency,

and an officer of the Agency shall be entitled to watch and inspect the construction of such works.

(2) The undertaker shall give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work other than an excluded 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 other than an excluded work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Part of



this Schedule, the Agency may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(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 the undertaker, 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 Agency may execute the works specified in the notice and any expenditure reasonably incurred by it in so doing shall be recoverable from the undertaker.

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

#### *Liability for damage to tidal and fluvial regimes*

**34.**—(1) If, during the construction of any specified work, or within 5 years after the completion of such work, there is caused or created an accumulation or erosion or an alteration to tidal flow or littoral drift which in whole or in part is reasonably attributable to the construction of such work and which causes damage or reasonable expectation of damage, the undertaker shall, if so required by the Agency before or within the period of 5 years after such completion and to the extent that it is so attributable, remedy such accumulation or erosion or alteration to tidal flow or littoral drift in the manner specified in sub-paragraph (4) and, if it refuses to do so, the Agency may itself cause such remedy to be carried out and may recover the reasonable cost of so doing from the undertaker.

(2) Should an accumulation or erosion or alteration of tidal flow or littoral drift which in whole or in part is reasonably attributable to the construction of the specified works arise which causes such damage or reasonable expectation of damage within the said period of 5 years and be required to be remedied in accordance with sub-paragraph (1), any continuation or recurrence of such accumulation or erosion or alteration of tidal flow or littoral drift shall to the extent that it is reasonably attributable to the construction or operation of any specified work be so remedied by the undertaker during the said period of 5 years and at any time subsequently, save that the undertaker's obligation under this sub-paragraph shall cease in the event that following the remedying of any accumulation or erosion or alteration of tidal flow or littoral drift a period of 5 years elapses without any further accumulation or erosion or alteration of tidal flow or littoral drift reasonably attributable to the construction of the specified works.

(3) In sub-paragraphs (1) and (2) and in paragraph 37 "damage" means, in the context of damage to flood defence capability or operation, any damage affecting the following—

- (a) the efficacy of flood defences;
- (b) the bed or banks of a river; or
- (c) the structure or operation of any outfall, flood or sea defences or any jetty or other structure under the jurisdiction of the Agency for the purposes of the Water Resources Act 1991(a).

(4) For the purposes of sub-paragraphs (1) and (2)—

- (a) in the case of an accumulation, the remedy shall be its removal or such protective works or measures as may reasonably be required by the Agency; and
- (b) in the case of erosion or alteration of tidal flow or littoral drift, the remedy shall be the carrying out of such reconstruction works and protective works or measures as may reasonably be required by the Agency.

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(a) 1991 c. 57.

(5) To the extent that the undertaker establishes by surveys, inspections, tests or sampling that such accumulation or erosion or alteration of tidal flow or littoral drift referred to in sub-paragraph (1) or (2) would have been caused in any event by factors other than the construction or operation of a specified work, the undertaker shall not be liable to remedy such accumulation or erosion or alteration of tidal flow.

(6) In carrying out any surveys, inspections, tests or sampling under sub-paragraph (5) the undertaker shall not unreasonably delay the execution of any remedial action required under sub-paragraph (1) or (2).

*Prior survey of drainage works*

**35.** Before commencing the construction of a specified work the undertaker shall procure at its own expense, in liaison with and to the reasonable satisfaction of the Agency, a survey of any drainage work liable to be affected by the specified work.

*Maintenance by undertaker of drainage works*

**36.—**(1) Subject to sub-paragraph (2), the undertaker shall, from the commencement of the construction of the specified works until their completion and except to the extent that any approval given by the Agency under this Part of this Schedule permits otherwise, maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land owned by the undertaker or which it otherwise has control of or is in occupation of 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) The obligation imposed on the undertaker under sub-paragraph (1) does not apply where the Agency or another person is liable to maintain any such work and is not precluded by the exercise of the powers conferred by this Order from doing so.

(3) If any such drainage work which the undertaker is liable to maintain is not maintained in good repair and free from obstruction, the Agency may by notice in writing require the undertaker to repair and restore the drainage work, or any part of it, or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld), to remove the work and restore the site (including sea defences) to its former condition, to such extent and within such limits as the Agency reasonably requires.

(4) If, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any work is served under sub-paragraph (3) on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and not subsequently made reasonably expeditious progress towards their completion, the Agency may carry out the measures specified in the notice and may recover any expenditure reasonably incurred by it in doing so from the undertaker.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (3), the Agency shall not, except in a case of emergency, exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

*Impairment of efficiency of and damage to drainage works*

**37.—**(1) 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 shall be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so within such reasonable period as the Agency may require by notice in writing to the undertaker, the Agency may make good the same and recover from the undertaker the expense reasonably incurred by it in doing so.

(2) If such impaired or damaged drainage work is not made good to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the undertaker to repair and restore the work to its former standard of efficiency or where necessary to construct some other work in substitution for it.

(3) If, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any impaired or damaged drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their completion, the Agency may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in doing so from the undertaker.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (1), the Agency shall not, except in a case of emergency, exercise its powers to make good the drainage works until the dispute has been finally determined.

*Protection of the fishery*

**38.**—(1) The undertaker shall take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the undertaker requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) If within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage to a fishery, the undertaker fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and may recover from the undertaker the expense reasonably incurred by it in doing so.

(4) In any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker the expenses reasonably incurred by it in doing so provided that written notice specifying those steps is served on the undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

*Indemnity in respect of particular expenses incurred by Agency under this Part of this Schedule*

**39.** The undertaker shall indemnify the Agency in respect of all reasonable and proper costs, charges and expenses which the Agency may reasonably incur or have to pay or which it may sustain—

- (a) in the examination or approval of plans under this Part of this Schedule; or
- (b) in the inspection, for the purposes of compliance with this Part of this Schedule, of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule.

*General indemnity by the undertaker*

**40.**—(1) Without prejudice to the other provisions of this Part of this Schedule, the undertaker shall indemnify the Agency from all claims, demands, proceedings, costs, damages, expenses or loss which may be made or taken against, or recovered from or incurred by, the Agency by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence; or
- (b) any damage to the fishery in so far as it has not already been compensated; or
- (c) any raising or lowering of the water table in land adjoining the authorised works or any sewers, drains and watercourses; or

- (d) any flooding or increased flooding of land adjoining the authorised works; or
- (e) inadequate water quality in any watercourse or other surface waters or in any groundwater,

which is caused by the construction of any of the specified works or any act or omission of the undertaker, its contractors, agents or employees whilst engaged upon the specified works.

(2) The Agency shall give to the undertaker reasonable notice of any such claim or demand and no settlement or compromise thereof shall be made without the agreement of the undertaker which agreement shall not be unreasonably withheld, and if such agreement is not given by the undertaker, the Agency shall diligently defend such claim or demand.

(3) Prior to incurring any expense which it may seek to recover under this paragraph, the Agency shall serve a written notice on the undertaker informing it of the Agency's intentions and requiring it within such time as the Agency may reasonably specify to take such steps as may be reasonably practicable to avoid the need for the Agency to incur such costs.

(4) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, shall not (in the absence of negligence on the part of the Agency, its officers, contractors or agents) relieve the undertaker from any liability under this paragraph.

#### *Dispute resolution*

**41.**—(1) For the purposes of Chapter 2 of Part 2 of the Water Resources Act 1991 (abstraction and impounding of water) and section 109 of that Act (as to structures in, over or under watercourses) as applying to the construction of any specified work, any consent or approval given or deemed to be given by the Agency under this Part of this Schedule with respect to such construction shall be deemed also to constitute an impounding licence under that Chapter or, as the case may be, a consent or approval under that section.

(2) Section 23 of the Land Drainage Act 1991(a) (prohibition on obstructions, etc. in watercourses) and any byelaws made under that Act or under the Water Resources Act 1991 shall not apply to anything done under or in pursuance of this Order.

**42.** Any dispute arising between the undertaker and the Agency under this Part of this Schedule (other than a difference as to its meaning or construction) shall, if the parties agree, be determined by arbitration under article 62 (arbitration), but shall otherwise be determined by the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Transport acting jointly on a reference to them by either party after notice in writing to the other.

**43.** Nothing in paragraphs 37(1) and 40(1) shall impose any liability on the undertaker in respect of accumulation or erosion or alteration of the tidal flow or littoral drift other than such accumulation or erosion or alteration of the tidal flow or littoral drift which the undertaker is liable to remedy under paragraph 34(1) or (2).

## PART 4

### PROTECTION OF THE MERSEY CONSERVANCY

#### *General*

**44.** For the protection of the Mersey Conservancy and the users of the River Mersey, the following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and the Secretary of State for Transport, have effect.

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(a) 1991 c. 59.

*Interpretation*

**45.** In this Part of this Schedule—

“ACRM” means the Acting Conservator of the River Mersey, or, if no person holds that office, the Secretary of State for Transport;

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

“plans” includes sections, elevations, drawings, specifications and programmes and construction methods including where applicable, such relevant hydraulic information about the River Mersey as may be reasonably requested by the ACRM.

*Tidal work*

**46.—**(1) The undertaker shall not commence any tidal work until—

(a) it has supplied to the ACRM proper and sufficient plans of that work and such further particulars as the ACRM may within 14 days of the submission of the plans reasonably require; and

(b) those plans have been approved in writing by the ACRM.

(2) A tidal work must not be constructed except in accordance with such plans as have been approved in writing by the ACRM, such approval not to be unreasonably withheld or delayed.

(3) If, within 42 days after such plans and any other particulars reasonably required under sub-paragraph (1)(a) have been supplied to the ACRM, the ACRM does not notify the undertaker of approval or disapproval of those plans, the ACRM is to be deemed to have disapproved of the plans or such part of the plans as is not approved.

(4) The approval of such plans may include conditions that—

(a) specified protective work be carried out before the commencement of a tidal work (whether temporary or permanent), if that protective work is reasonably required to prevent detriment to vessel movement on, or the flow or regime of, the River Mersey; and

(b) other things, not including alteration to the basic design of the works, be done or omitted in order to prevent detriment to vessel movement on, or the flow or regime of, the River Mersey.

(5) The undertaker—

(a) must comply with all such conditions; and

(b) must not commence construction of the relevant tidal work until the ACRM has notified the undertaker in writing that any protective work has been completed to the ACRM’s reasonable satisfaction.

(6) (a) The undertaker must carry out all operations for the construction or maintenance of any tidal works so that vessel movement on, or the flow or regime of, the River Mersey and the exercise of the ACRM’s statutory functions do not suffer more interference than is reasonably practicable.

(b) The ACRM may at all reasonable times, on giving such notice as may be reasonable in the circumstances, inspect and survey such operations.

(7) (a) If any tidal work is constructed otherwise than in accordance with—

(i) the requirements of this Part of this Schedule; or

(ii) with any condition in an approval pursuant to sub-paragraph (1),

the ACRM may by notice in writing require the undertaker at the undertaker’s own expense to comply with the requirements of this Part of this Schedule or that condition.

(b) If the undertaker does not comply with that notice, or is unable to do so, within a reasonable period specified in the notice, the ACRM may in writing require the undertaker to remove, alter or pull down the tidal work and, where the tidal work is

removed or pulled down, to restore the site of that work to its condition prior to the construction of the tidal work to such an extent and within such limits as the ACRM may think proper.

(8) Upon completion of the construction or maintenance of an authorised work, the undertaker must—

- (a) remove as soon as is practicable any temporary tidal works and materials for such temporary tidal works, carried out or placed only for the purposes of that part of the authorised work; and
- (b) make good the site to the reasonable satisfaction of the ACRM.

(9) The undertaker must not—

- (a) deposit in or allow to fall or be washed into the River Mersey any gravel, soil or other material except to the extent permitted by any approval of a tidal work;
- (b) discharge or allow to escape either directly or indirectly into the river any offensive or injurious matter in suspension or otherwise; or
- (c) discharge into the river any water by any watercourse, public sewer or drain without the consent of the ACRM, who may impose such terms and conditions as may be reasonable but must not unreasonably withhold consent.

(10) The undertaker shall (subject to sub-paragraph (11)) remove from the River Mersey any pile, stump or other obstruction which becomes exposed in consequence of the construction of a tidal work.

(11) If it is not reasonably practicable to remove a pile, stump or other obstruction, the undertaker must cut it off at such level below the bed of the River Mersey as the ACRM may reasonably direct.

(12) If the undertaker fails to remove or cut off (as the case may be) any pile, stump or other obstruction pursuant to sub-paragraphs (10) and (11) within a period of 28 days beginning with the date of receipt of a written notice from the ACRM requiring its removal or cutting off, the ACRM may carry out the removal or cutting off and recover the cost of doing so from the undertaker.

(13) (a) If a tidal work is abandoned or falls into decay, the ACRM may by notice in writing require the undertaker—

- (i) to repair or restore the tidal work, or any part of it; or
- (ii) to remove the tidal work and restore the site of that work to its condition prior to the construction of the tidal work.

(b) In that notice the ACRM may—

- (i) prescribe a reasonable period for compliance; and
- (ii) prescribe such extent and such limits for the restoration as the ACRM thinks proper.

(14) If—

- (a) a work consisting partly of a tidal work and partly of works (“the land works”) on or over land above the level of high-water spring tides is abandoned or falls into decay; and
- (b) the land works are in such condition as to interfere or cause reasonable apprehension that they might interfere with the right of navigation on the River Mersey or other public rights over the foreshore,

the ACRM may include the land works or any part of them in any notice under sub-paragraph (13).

(15) If the work specified in a notice given under sub-paragraph (13) is not completed to the satisfaction of the ACRM, the ACRM may undertake that work and may recover any expenditure reasonably incurred in doing so from the undertaker.

(16) On completion of the construction of the tidal works, the undertaker must supply to the ACRM a plan on a scale of not less than 1 to 2500 and sections and elevations on a scale of not less than 1 to 100 showing to the ACRM’s reasonable satisfaction the situation and levels of the permanent tidal works at that time.

**47.**—(1) The undertaker must at all times comply with the hydrodynamic and sedimentary monitoring plans agreed between the undertaker and the ACRM and any variations of the plan agreed between them.

(2) If the undertaker fails to do so to the satisfaction of the ACRM, the ACRM may undertake such measures as are reasonably necessary to secure such compliance and may recover any expenditure reasonably incurred from the undertaker in doing so.

**48.** When giving any notice required by this Order to Trinity House or the Mersey Docks and Harbour Company, the undertaker must give a copy of that notice to the ACRM.

**49.**—(1) The undertaker must reimburse to the ACRM all costs, charges, damages and expenses which may reasonably be incurred by the ACRM—

- (a) by reason of the construction or maintenance of the authorised works or failure subsequently; or
- (b) by reason of any act or omission of the undertaker or of any persons in its employ or of its contractors or agents or others whilst engaged upon the construction or maintenance of the authorised works or dealing with any failure of such works; or
- (c) by reason of the hydrodynamic and sedimentary monitoring plan.

(2) The undertaker must indemnify the ACRM from and against all claims and demands arising out of or in connection with the authorised works or any such failure, act or omission.

(3) The fact that any act or thing may have been done by the ACRM on behalf of the undertaker or done by the undertaker, any person in its employ or its contractors or agents in accordance with plans or particulars submitted to or modifications or conditions specified by the ACRM, or in a manner approved by the ACRM, or under its supervision or the supervision of its duly authorised representative, shall not (if it was done or required without negligence on the part of the ACRM or the duly authorised representative of the ACRM, or any person in the employ of the ACRM or the contractors or agents of the ACRM) excuse the undertaker from liability under the provisions of this paragraph.

(4) The ACRM must give the undertaker reasonable notice of any such claim or demand as is referred in sub-paragraph (1) and no settlement or compromise subsequently may be made without the prior consent of the undertaker, which must not be unreasonably withheld.

**50.** Any difference arising between the undertaker and the ACRM under this Part of this Schedule (other than a difference as to the meaning or construction of this Part of this Schedule) must be referred to and settled by arbitration in accordance with article 62 (arbitration).

## PART 5

### PROTECTION OF NETWORK RAIL INFRASTRUCTURE LIMITED

**51.** For the protection of Network Rail the following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 64, any other person on whom rights or obligations are conferred by that paragraph, have effect.

**52.** In this Part of this Schedule—

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

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

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

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(a) 1993 c. 43.

“Network Rail” means Network Rail Infrastructure Limited (company number 02904587) whose registered office is at Kings Place, 90 York Way, London, N1 9AG and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006<sup>(a)</sup>) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

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

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

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

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

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

**53.—**(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

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

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

**54.—**(1) The undertaker shall not exercise the powers conferred by article 16 (power to survey and investigate land) or the powers conferred by section 11(3) of the 1965 Act (powers of entry) in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

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

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

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

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

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(a) 2006 c. 46.



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

(2) The approval of the engineer under sub-paragraph (1) shall not be unreasonably withheld, and if by the end of the period of 56 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated disapproval of those plans and the grounds of disapproval the engineer shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 56 days beginning with the date on which such plans have been supplied to Network Rail, Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail shall construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

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

**56.—**(1) Any specified work and any protective works to be constructed by virtue of paragraph 55(4) shall, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 55;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic on it.

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

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

**57.** The undertaker shall—

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

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

**59.**—(1) If any permanent or temporary alterations or additions to railway property, are reasonably necessary in consequence of the construction of a specified work, during the construction of the specified work, or during a period of 12 months after the opening of the new bridge to traffic subject to toll in order to ensure the safety of railway property or the continued safe operation of the railways of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which shall be specified in the notice), the undertaker shall pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that that part of the specified work is to be constructed, Network Rail shall assume construction of that part of the specified work and the undertaker shall, regardless of any such approval of a specified work under paragraph 55(1), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer shall, in respect of the capitalised sums referred to in this paragraph and paragraph 60(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

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

**60.** The undertaker shall repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 55(3) or in constructing any protective works under the provisions of paragraph 55(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watchguards and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may, in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

**61.** If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway

property, the undertaker shall, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

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

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

**64.—(1)** The undertaker shall pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction or maintenance of a specified work or the failure of it; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work,

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

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

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

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

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

(6) In this paragraph—

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

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

**65.** Network Rail shall, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 64) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or

claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

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

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

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

**68.** Nothing in this Order, or in any enactment incorporated with or applied by this Order, shall prejudice or affect the operation of Part 1 of the Railways Act 1993.

**69.** The undertaker shall give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 43 (power to enter into concession agreements and lease or transfer of undertaking, etc.) and any such notice shall be given no later than 28 days before any such application is made and shall describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

**70.** The undertaker shall, no later than 28 days from the date that the plans submitted to the Secretary of State are certified in accordance with article 59 (certification of plans, etc.), provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

## PART 6

### PROTECTION OF UNITED UTILITIES WATER PLC

#### Interpretation

**71.** In this Part of this Schedule—

“alteration” includes the provision of alternative means of operation or the diversion of any apparatus;

“apparatus” means—

- (a) mains, pipes or other apparatus belonging to, or maintained by, the company for the purposes of water supply; and
- (b) any water main or service pipe (or part of it) that is subject to an agreement to adopt made under section 51A of the Water Industry Act 1991(a); and
- (c) any sewer, drain or works vested in the company under the Water Industry Act 1991 and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or

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(a) 1991 c. 56.

sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works; and

(d) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to such apparatus;

“the company” means United Utilities Water PLC or its successor for the time being in its capacity as either a water undertaker or a sewerage undertaker within the meaning of the Water Industry Act 1991;

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

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

“specified work” means so much of the authorised works as will or may be situated over or within 15 metres (or 200 metres where explosives are used) measured in any direction of any apparatus, or (wherever situated) as will or may impose any load directly upon any apparatus.

### **No application where street works code applies**

72. This Part of this Schedule (other than paragraphs 73 and 76) shall not apply to anything done or proposed to be done in relation to or affecting any apparatus in so far as the relations between the undertaker and the company are regulated by the provisions of Part 3 of the 1991 Act.

### **Disapplication of Schedule 9 in part**

73. Paragraphs 1(1) and 2 of Schedule 9 (provisions relating to statutory undertakers, etc.) shall not apply in relation to apparatus to which this Part of this Schedule applies and paragraph 1(3) and (4) of that Schedule shall have effect as if they referred to apparatus removed under this Part of this Schedule.

### **Acquisition of apparatus, etc.**

74. Notwithstanding anything in the Order or shown on the deposited plans, the undertaker shall not acquire from the company any apparatus or land pursuant to the Order otherwise than by agreement or with the company’s consent which shall not be unreasonably withheld or delayed but may be given subject to reasonable conditions.

### **Exercise of powers respecting trial holes**

75. The undertaker shall not, in the exercise of the powers of section 11(3) of the 1965 Act, as applied by this Order, or of article 16 (power to survey and investigate land), make any trial holes which interfere with any apparatus without the consent of the company (which shall not be unreasonably withheld).

### **Access**

76.—(1) If in consequence of the exercise of the powers of this Order the access to any apparatus is materially obstructed, the undertaker shall provide reasonable alternative means of access to such apparatus which is not materially less convenient to the access enjoyed by the company prior to the obstruction.

(2) Where, in consequence of this Order, any part of a highway in which any apparatus is situated ceases to be part of a highway, the company may exercise the same rights of access to such apparatus as it enjoyed immediately before the making of this Order, but nothing in this sub-

paragraph shall prejudice or affect the power of the undertaker to make provision for the alteration or removal of such apparatus in submitting plans under paragraph 77.

(3) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 9 (temporary stopping up of streets), and subject always to the power of the undertaker to make provision for the alteration of such apparatus the company shall be at liberty at all times after giving reasonable notice except in a case of urgency to construct and do all such works and things in, upon or under any such highway as may be reasonably necessary to enable it to maintain, protect, or use any apparatus which at the time of the stopping up or diversion was in that highway.

### **Plan approval**

77.—(1) Without prejudice to the other provisions of this Part of this Schedule, before commencing the construction or renewal of any specified work liable to affect any apparatus, and in the case of such a specified work of a temporary nature its removal, the undertaker shall submit to the company plans as described in sub-paragraph (2) (“the plans”) and shall not commence that work until the company has signified in writing its approval of those plans.

(2) The plans to be submitted to the company shall be detailed plans, drawings, sections and specifications describing the position and manner in which, and the level at which, any specified work is proposed to be constructed and the position of all apparatus within 15 metres of that work or upon which the specified work will impose a load and shall include detailed drawings of any works for alteration or replacement or protection of such apparatus which the undertaker may propose.

(3) For the purpose of the preparation of the plans and subject to such reasonable requirements as it may specify, the company shall promptly upon the undertaker’s reasonable request permit the undertaker to have access to plans in its possession and to any of its apparatus.

(4) Any approval of the company required under this paragraph—

- (a) may be given subject to reasonable conditions;
- (b) shall not be unreasonably withheld; and
- (c) shall be deemed to have been given if it is neither given nor refused within 42 days of the submission of plans for approval.

(5) Prior to their approval under sub-paragraph (1), the company may require such modifications to be made to the plans as may be reasonably necessary for the alteration or replacement of apparatus, to secure apparatus and the remainder of its undertaking as a sewerage undertaker and water undertaker against interference or risk of damage and to provide and secure reasonably proper and convenient means of access to apparatus and its sewage treatment works.

78.—(1) The specified works shall be constructed and, in the case of any temporary work removed, in accordance with plans approved, or deemed to be approved, or settled by arbitration, as the same may be amended from time to time by agreement between the undertaker and the company, and in the construction and removal of the specified works, the undertaker shall comply with all reasonable requirements of the company (which shall be given as soon as reasonably practicable) and shall provide reasonable new, altered or substituted apparatus or works for the protection of apparatus and the remainder of its undertaking as a sewerage undertaker and water undertaker, in such manner as the company may reasonably require, by way of replacement provision for or for the proper protection of, and for preventing injury or impediment to, any such apparatus and the remainder of its undertaking by reason of the specified works.

(2) All works under sub-paragraph (1), for the provision of new, altered or substituted apparatus or the protection of any apparatus shall, where so required by the company, be constructed by the company or under the supervision, if given, of an officer of the company duly appointed for the purpose and to the company’s reasonable satisfaction, and all costs, charges and expenses reasonably incurred by the company in the construction of such works, or in the preparation or examination of plans or designs of such works, or in such supervision, shall be paid to the company by the undertaker.

(3) Where works are constructed under sub-paragraph (1) by the company, they shall be constructed with all reasonable despatch and also to the reasonable satisfaction of the undertaker.

(4) When works for the provision of any such new, altered or substituted apparatus, or any such protective work forming part of any such new, altered or substituted apparatus or any existing apparatus, have been completed under this Part of this Schedule to the reasonable satisfaction of the company, they shall be vested in the company forthwith but shall be maintainable by the undertaker until a period of 12 months has elapsed and the company or an engineer appointed by the company acting reasonably has issued a certificate of final inspection of the new, altered or substituted apparatus.

79.—(1) Subject to the following provisions of this Part of this Schedule, the undertaker shall be liable to make good, or, if the company so decides, to repay to the company any reasonable expense reasonably incurred by the company in making good, all injury or damage to any apparatus (except in so far as such apparatus is intended for alteration or removal for the purposes of the specified work) caused by or resulting from the construction of any specified work or any investigation undertaken in relation to any specified works and the provision of any new, altered or substituted apparatus or any protective work under this Part of this Schedule and shall pay to the company any reasonable additional expense to which it may be put in the maintenance, management or renewal or any new, altered or substituted apparatus which may be necessary in consequence of the construction of any specified work save to the extent that sub-paragraph (6) applies provided that the undertaker may at its request pay a capitalised sum to the company in settlement of any such claim by the company representing the reasonable additional expense to which the company reasonably expects to be put.

(2) The company shall, in respect of the capitalised sums referred to in sub-paragraph (1) provide such details of the formula by which those sums should be calculated as the undertaker may reasonably require.

(3) The undertaker shall indemnify the company against all actions, claims, demands, costs, expenses, damages or loss which may be made on or against the company which the company may incur or have to pay or which it may sustain in consequence of the construction of a specified work or of the failure or want of repair of a specified work or any subsidence caused by any specified work or in consequence of any act or omission of the undertaker, their contractors, agents, workers or servants, whilst engaged upon the specified work and any new, altered or substituted apparatus or any protective work.

(4) The company shall give to the undertaker reasonable notice of any such claim or demand and no settlement or compromise thereof shall be made without the agreement in writing of the undertaker which, if it withholds any such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(5) Nothing in sub-paragraph (1) or (3) shall impose any liability on the undertaker in respect of any damage to the extent that it is attributable to the act, neglect or default of the company, its officers, servants, or, if not the undertaker, its contractors or agents.

(6) If pursuant to the provisions of this Part of this Schedule—

(a) alternative apparatus of better type, or greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions, except where this has been solely due to using the nearest currently available type, or

(b) apparatus (whether existing apparatus or alternative apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated, and the placing of apparatus of that type or capacity or of those dimensions, or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration to be necessary having regard, among other things, to the nature of the authorised works, then, if it involves cost in the construction of works under paragraph 76 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 company by virtue of sub-paragraph (1) shall be reduced by the amount of that excess.

(7) For the purposes of sub-paragraph (6), an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus except in a case where the apparatus as so extended serves a purpose (either additional to or instead of that served by the existing apparatus) which was not served by the existing apparatus.

(8) An amount which apart from this sub-paragraph would be payable to the company in respect of works by virtue of this paragraph shall, 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 company any financial benefit by deferment of the time for renewal of the apparatus or of the system of which it forms part in the ordinary course, be reduced by the amount which represents that benefit.

(9) In any case where work is carried out by the undertaker pursuant to paragraph 76 and, if such work had been carried out by the company, the repayment made to the company under this paragraph would fall to be reduced pursuant to sub-paragraphs (4) to (6), the company shall pay to the undertaker such sum as represents the amount of that reduction.

**80.**—(1) An officer of the company duly appointed for the purpose may, at any reasonable time and, if required by the undertaker, under their supervision and control, enter upon and inspect any specified work or any other works constructed under this Part of this Schedule but may not give instructions to any person engaged in or about the specified works except the undertaker or such person as it may from time to time nominate.

(2) The approval by the company of any plans, drawings, sections or specifications or the supervision by it of any work under this Part of this Schedule shall not (if it was done without negligence on the part of the company, its officers, servants, or, if not the undertaker, its contractors or agents) exonerate the undertaker from any liability or affect any claim for damages by the undertaker.

**81.** As soon as reasonably practicable after the completion of the construction of the specified works, the undertaker shall deliver to the company a plan and section showing the position and level of those works as constructed and all new, altered or substituted works provided under this Part of this Schedule.

## PART 7

### PROTECTION OF CABLE AND WIRELESS UK

**82.**—(1) For the protection of C&W, the following provisions of this Part of this Schedule shall, unless it is otherwise agreed in writing between the undertaker and C&W, have effect.

(2) In this Part of this Schedule—

“C&W” means Cable & Wireless UK; and

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003<sup>(a)</sup>.

**83.** The temporary stopping up or diversion of any street under article 9 (temporary stopping up of streets) shall not affect any right of a public communications provider under paragraph 9 of the Telecommunications Code (“the Code”), contained in Schedule 2 to the Telecommunications Act 1984<sup>(b)</sup> as amended by Schedule 3 to the Communications Act 2003, in respect of any apparatus which at the time of the temporary stopping up or diversion is in that street.

**84.** If C&W suffers damage by reason or in consequence of the construction, use or failure of the authorised works or any subsidence resulting from those works, the undertaker shall pay the cost reasonably incurred by C&W in making good such damage, and shall indemnify C&W

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(a) 2003 c. 21.

(b) 1984 c. 12.



against claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by C&W by reason or in consequence of any such damage, but—

- (a) nothing in this paragraph shall impose any liability on the undertaker with respect to any damage to the extent that such damage is attributable to any act or omission of C&W, its officers, servants, contractors or other agents; and
- (b) C&W shall give to the undertaker reasonable notice of any claim, demand or proceedings and shall make no settlement of any claim, demand or proceedings without the consent of the undertaker, such consent not to be unreasonably withheld.

**85.** Nothing in this Order shall affect any right of a public communications provider under the Code.

## SCHEDULE 11

Article 41

### LEVEL OF TOLLS

#### PART 1

#### INITIAL TOLLS AND REVISION OF TOLLS

##### **Initial toll range**

**1.**—(1) On and from the opening day the tolls chargeable for the use of the new crossing shall be at such level within the toll range specified in sub-paragraph (4) for the class of vehicle specified as the undertaker may determine and shall remain at such level until revised in accordance with the following provisions of this Schedule.

(2) The classification of vehicles or classes of vehicles in respect of which tolls may be charged from the opening day shall be those set out in Part 2 until revised in accordance with the following provisions of this Schedule.

(3) Where any vehicle falls within the definition of more than one classification of vehicles it shall be deemed to fall in the class of vehicles bearing the highest number in Part 2.

(4) In this Schedule “toll range” means the ranges of tolls contained in the table below increased by the same percentage for each whole year between April 2008 and the opening day as referred to in paragraph 2, subject to paragraph 3.

<b>Class of vehicle</b>	<b>Toll range</b>
class 1 vehicles	£0.00 to £2.50
class 2 vehicles	£1.00 to £2.50
class 3 vehicles	£2.00 to £5.00
class 4 vehicles	£4.00 to £10.00

(5) The toll range from the opening day for any vehicles to which the Road Vehicles (Authorisation of Special Types) (General) Order 2003(a) applies shall be £15.00 to £220.00 increased by the same percentage for each whole year between April 2008 and the opening day as referred to in paragraph 2, subject to paragraph 3.

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(a) S.I. 2003/1998.

### **Revision of toll ranges**

2.—(1) The toll ranges referred to in paragraph 1 shall be recalculated annually on 1 April each year by multiplying the upper and lower limits applying in each toll range by the indexation factor except where a reduction in those limits would result.

(2) The indexation factor shall be derived by dividing the value of the retail prices index for the month of February in the relevant year by the value of the retail prices index for the month of February in the preceding year to produce a percentage and then adding one per cent.

3. Any revision to the toll ranges referred to in paragraph 1 pursuant to the provisions of this Order—

- (a) if it is neither a multiple of ten pence nor an amount which on division by ten produces a remainder of five pence shall be rounded to the nearest ten pence; and
- (b) if it is an amount which on division by ten produces a remainder of five pence shall be increased by five pence.

4.—(1) Subject to sub-paragraph (2), the references in this Schedule to the retail prices index means the monthly United Kingdom index of Retail Prices (for all items) published by the Office of National Statistics.

(2) If that index is not published for any month those references shall be references to any substituted index or index figures published by that Office for that month.

### **Revision of tolls**

5.—(1) The tolls payable in respect of any vehicle or class of vehicle may be varied within the toll range in effect from time to time.

(2) Except as paragraph 7 allows, no revision of tolls pursuant to this Schedule shall result in a toll which exceeds, at the date that any revision is proposed, an amount that is equivalent to the higher figure of the toll range increased by the same percentage as is referred to in paragraph 2, subject to paragraph 3.

(3) It shall not be necessary to vary any toll by reason of a revision to a toll range resulting in a toll subsisting that is lower than the lower limit of a toll range.

6.—(1) Whenever the undertaker proposes to revise the toll that applies in respect of any vehicle or class of vehicles pursuant to paragraph 5 the undertaker shall publish in at least one local newspaper circulating in the area in which the new crossing is situated, a notice substantially in the form set out in Part 5.

(2) The undertaker may charge the tolls set out in a notice given under sub-paragraph (1) from the day 28 days after that on which the notice referred to in sub-paragraph (1) is published.

### **Further provisions as to revision of toll ranges and classification of vehicles**

7.—(1) Where a revision of tolls within the toll ranges recalculated pursuant to paragraph 2 would be insufficient—

- (a) to pay the costs and expenses incurred in designing, constructing, managing, operating and maintaining the new crossing or any costs associated with financing any of the same;
- (b) to provide such funds as are or are likely to be necessary to discharge the obligations of the undertaker pursuant to a concession agreement;
- (c) to pay the interest on, and repay the principal of monies borrowed in respect of, the new crossing;
- (d) to make payment into any maintenance or reserve fund provided in respect of the new crossing; or
- (e) in providing funds for, to meet expenses incurred in or the cost of securing any necessary authority or consent for, and in constructing or in securing, the construction, maintenance

and operation of, the new crossing or securing the maintenance or operation of the Silver Jubilee Bridge (as the case may be) or works to the Silver Jubilee Bridge, the toll ranges or any of them may if the undertaker so determines be increased to enable the purposes set out in this paragraph to be achieved, after complying with the requirements set out in paragraphs 8 to 14.

(2) The undertaker may vary the classification of vehicles or classes of vehicles in respect of which tolls may be charged after complying with the requirements set out in paragraphs 8 to 14.

(3) The toll range in respect of any vehicle or class of vehicles may not be revised pursuant to this paragraph if less than 12 months have passed following the previous exercise by the undertaker of its powers under this paragraph.

**8.**—(1) Prior to exercising its powers under paragraph 7 the undertaker shall—

- (a) publish in at least one local newspaper in the area in which the new crossing is situated a notice substantially in the form set out in Part 3 of this Schedule;
- (b) take such other steps as it may consider appropriate for ensuring that adequate publicity about the proposed change is given to persons likely to be affected by its provisions and, without limiting the scope of this sub-paragraph, such other steps may include—
  - (i) publication of a notice in the London Gazette;
  - (ii) the display of notices in roads or other places affected by the proposed change; or
  - (iii) the delivery of notices or letters to persons appearing to the undertaker to be likely to be affected by any provision in the proposed change.

(2) The undertaker shall make the following deposited documents available for public inspection, so far as they are relevant, at the principal offices of the undertaker during normal office hours and at such other places (if any) within the area in which the new crossing is situated as it may think fit during such hours as it may determine for each such place—

- (a) details of the changes proposed pursuant to paragraph 7;
- (b) a map which clearly shows the location and effect of the proposals;
- (c) a statement setting out the reasons for the proposals including, where the proposals result from costs associated with financing any matter, an explanation of the need to do so;
- (d) if the proposals vary, revoke, apply or suspend existing provisions, copies of those provisions; and
- (e) a report setting out the steps taken to publicise the changes proposed and the consultation undertaken with persons likely to be affected by any provision in the proposed changes together with a summary of the response to such consultations.

(3) The deposited documents referred to in sub-paragraph (2) shall be made so available at the times and at the places specified in the notice referred to in sub-paragraph (1)(a) throughout the period beginning with the date on which such notice of proposals is first published and ending with the last day of the period of 6 weeks following that date.

#### *Objections*

**9.**—(1) Any person may object to the changes proposed by the undertaker pursuant to paragraph 7 by the date specified in the notice of proposals.

(2) An objection under paragraph (1) shall—

- (a) be made in writing;
- (b) state the grounds on which it is made;
- (c) indicate who is making the objection;
- (d) provide an address to which any correspondence relating to that objection may be sent;
- (e) be sent to the address specified in the notice of proposals by the date specified in that notice.

**10.**—(1) Where paragraph 7 applies to a proposed change and following the publication of a notice in accordance with paragraph 8(1)(a) no objections are received in the manner prescribed in paragraph 9 or any objection is withdrawn, the undertaker may, subject to complying with sub-paragraph (2), revise—

- (a) the toll ranges in respect of any vehicles or class of vehicles to a level not exceeding those set out in the notice referred to in paragraph 8(1)(a);
- (b) the classification of vehicles or classes of vehicles in respect of which tolls may be charged to those set out in the notice referred to in paragraph 8(1)(a).

(2) The undertaker shall publish in at least one newspaper circulating in the area in which the new bridge is situated a notice substantially in the form set out in Part 5 of this Schedule stating the toll ranges, classifications of vehicles or classes of vehicles that will then apply.

(3) The undertaker may apply the revised toll ranges or apply the revised vehicle classifications or classes of vehicles (as the case may be) from the day 28 days after the notice referred to in sub-paragraph (2) is published.

**11.** Where paragraph 7 applies to any proposed change and an objection has been received in the manner prescribed in paragraph 9 and the objection is not withdrawn, the undertaker shall not determine to raise the amount of any tolls or toll ranges or change vehicle classifications or classes of vehicles until it has complied with the provisions of paragraphs 12 and 13.

**12.**—(1) Where any objections have been made in accordance with paragraph 9 the undertaker shall cause a local inquiry to be held for the purpose of considering the objections.

(2) The local inquiry shall be held by a person appointed by the Secretary of State.

(3) Subsections (2) and (3) of section 250 of the Local Government Act 1972<sup>(a)</sup> shall apply to an inquiry under this paragraph as they apply to an inquiry under that section.

(4) The Tribunals and Inquiries Act 1992<sup>(b)</sup> shall apply to a local inquiry held under this paragraph as it applies to a statutory inquiry held by the Minister but as if in section 10(1) of that Act (statement of reasons for decision) the reference to any decision taken by the Minister were a reference to the decision taken by the undertaker.

(5) A local inquiry need not be held under this paragraph if all persons who have made objections have withdrawn their objections in which case paragraph 10(1) shall apply.

**13.**—(1) In any case where the undertaker holds a local inquiry in connection with the exercise of its powers under paragraph 7, the undertaker shall—

- (a) publish at least once in a local newspaper circulating in the area in which the new crossing is situated a notice in substantially the form set out in Part 4;
- (b) give notice of the inquiry in writing to each person who has objected to the proposals in accordance with paragraph 9 and who has not withdrawn the objection; and
- (c) take such other steps as it may consider appropriate for ensuring that adequate publicity about the inquiry is given to persons likely to be affected by the proposed changes and, without limiting the scope of this sub-paragraph, such other steps may include—
  - (i) publication of a notice in the London Gazette;
  - (ii) the display of notices in roads or other places affected by the proposed changes; or
  - (iii) the delivery of notices or letters to premises, or premises occupied by persons, appearing to the undertaker to be likely to be affected by the proposed changes.

(2) An inquiry to which sub-paragraph (1) applies shall not begin less than 12 weeks after the notice of the proposed inquiry is given pursuant to sub-paragraph (1)(b).

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(a) 1972 c. 70.

(b) 1992 c. 53.

(3) The person appointed to hold a local inquiry under paragraph 12(2) may require additional publicity to be given to the inquiry for the purpose of encouraging participation by members of the public.

(4) The person holding any local inquiry to which this provision applies shall have regard to the representations of members of the public and the responses to consultation in the report referred to at paragraph 8(2)(e).

**14.**—(1) Where a local inquiry has been held the undertaker must first consider the report of the person it has appointed to hold the local inquiry before making any determination under this paragraph.

(2) Having considered the report of the person who held the inquiry the undertaker must—

- (a) determine that the classification of vehicles or classes of vehicles in respect of which tolls may be charged shall be revised to those set out in the notice referred to in paragraph 8(1)(a); or
- (b) determine that the toll ranges in respect of any vehicles or class of vehicles shall be revised to levels not exceeding those set out in the notice referred to in paragraph 8(1)(a); or
- (c) determine not to make any such revision.

(3) The undertaker shall publish in at least one local newspaper circulating in the area in which the new crossing is situated, a notice substantially in the form set out in Part 5 of this Schedule stating the toll ranges and any classification of vehicles or classes of vehicles determined in accordance with sub-paragraph (2).

(4) The undertaker may apply the toll ranges or classifications of vehicles or classes of vehicles (as the case may be) determined pursuant to sub-paragraph (2) from the day 28 days after which the notice referred to in sub-paragraph (3) is published.

## PART 2

### CLASSIFICATION OF VEHICLES

**15.** In this Schedule—

“class 1 vehicle”	means a moped falling within classifications A(a) and A(b); motorcycles falling within classifications B(a) and B(b); motor tricycles falling within classifications C(a) and C(b); and quadricycles falling within classifications D(a), D(b), E(a) and E(b).
“class 2 vehicle”	means motor vehicles with at least four wheels, used for the carriage of passengers, falling within classifications M <sub>1</sub> (a) and M <sub>1</sub> (b); and motor vehicles with at least four wheels, used for the carriage of goods falling within classification N <sub>1</sub> (a).
“class 3 vehicle”	means motor caravans falling within classifications L(a) and L(b); motor vehicles with at least four wheels, used for the carriage of passengers falling within classifications M <sub>2</sub> (a) and M <sub>2</sub> (b); and motor vehicles with at least four wheels used for the carriage of goods, falling within classifications N <sub>1</sub> (b), N <sub>2</sub> (a) and N <sub>2</sub> (b).
“class 4 vehicle”	means motor vehicles with at least four wheels, used for the carriage of passengers falling within classifications M <sub>3</sub> (a) and M <sub>3</sub> (b); and motor vehicles with at least four wheels used for the carriage of goods, falling within classifications N <sub>3</sub> (a) and N <sub>3</sub> (b).

Reference to “classifications” in this Part are references to the classes of motor vehicles contained or referred to in Parts 2 to 5 of the Schedule to the Road User Charging and Work Place Parking Levy (Classes of Motor Vehicles) (England) Regulations 2001<sup>(a)</sup>.

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<sup>(a)</sup> S.I. 2001/2793.

PART 3

FORM OF NOTICE  
THE RIVER MERSEY (MERSEY GATEWAY BRIDGE) ORDER 2011  
("THE ORDER")  
NOTICE OF PROPOSED REVISION OF  
[TOLL RANGES]  
[VEHICLE CLASSIFICATIONS]

The undertaker pursuant to the Order proposes to revise the [toll ranges/vehicle classifications] applicable to the Mersey Gateway Bridge in accordance with the terms of Schedule 11 to the Order. The revisions proposed are [insert a brief statement of the general nature and effect of the revisions].

Any objections to, or other representations about, the proposals should be sent to [name], [address] on or before [expiry date for objections being not less than 42 days after the date of the notice]. An objection or representation MUST (i) be received by the undertaker [details] on or before [expiry date for objections], (ii) be made in writing which may include email, (iii) state the grounds of the objection or representation, (iv) indicate who is making the objection or representation, and (v) give a postal address to which correspondence relating to the objection may be sent. (If you are sending your objection or other representation by email, please provide a postal address.)

Signed: .....

\*On behalf of: .....

Date: .....

Name and status of signatory: .....

\*Delete or amend as appropriate

PART 4

FORM OF NOTICE  
THE RIVER MERSEY (MERSEY GATEWAY BRIDGE) ORDER 2011  
("THE ORDER")  
NOTICE OF INQUIRY INTO PROPOSED REVISION OF  
[TOLL RANGES]  
[VEHICLE CLASSIFICATIONS]

The undertaker intends to hold a local inquiry into its proposals to revise the [toll ranges/vehicle classifications] applicable to the Mersey Gateway Bridge in accordance with the terms of Schedule 11 to the Order. The revisions proposed are:

[Insert a brief outline of the general nature and effect of the revisions].

The local inquiry will open on [date] at [location].

For the period from the date of this notice until the close of the inquiry details of the revisions proposed, copies of existing provisions and a statement setting out the reasons for the revisions will be available at [location] during normal office hours.

Signed: .....

\*On behalf of: .....

Date: .....

Name and status of signatory: .....

\*Delete or amend as appropriate



## PART 5

FORM OF NOTICE  
THE RIVER MERSEY (MERSEY GATEWAY BRIDGE) ORDER 2011  
NOTICE OF REVISION OF  
[TOLLS]  
[TOLL RANGES]  
[VEHICLE CLASSIFICATIONS]

The [tolls/toll ranges/vehicle classifications] applicable to the Mersey Gateway Bridge shall be:  
[state revised tolls/toll ranges/vehicle classifications].

The revisions set out above shall take effect [on a date not less than 28 days after the date of the notice].

Signed: .....

\*On behalf of: .....

Date: .....

Name and status of signatory: .....

\*Delete or amend as appropriate

## SCHEDULE 12

Article 41

### REGISTER OF VEHICLES EXEMPT FROM TOLLS

#### PART 1

1. Tolls may not be levied in respect of—

- (a) a vehicle whose details have been recorded on the exemptions register in accordance with Part 2 of this Schedule and, in the case of those listed in paragraphs 2(a) to (d), being used in the execution of duty; or
- (b) a vehicle being used in connection with—
  - (i) the collection of tolls or charges; or
  - (ii) the maintenance, improvement or renewal of, or other dealing with, the Silver Jubilee Bridge or the new crossing or any structure, works or apparatus in, on, under or over any part of the new crossing or Silver Jubilee Bridge; or
- (c) a vehicle which, having broken down on the Silver Jubilee Bridge or the new crossing while travelling in one direction, is travelling in the opposite direction otherwise than under its own power; or
- (d) a military vehicle, that is, a vehicle used for army, naval or air force purposes, while being driven by persons for the time being subject to the orders of a member of the armed forces of the Crown.

## PART 2

2. Vehicles falling within the following descriptions of motor vehicles shall be eligible to be entered upon the exemptions register—

- (a) a police vehicle, identifiable as such by writing or markings on it or otherwise by its appearance, or being the property of the Service Authority for the National Criminal Intelligence Service or the Service Authority for the National Crime Squad;
- (b) a fire engine as defined by paragraph 4(2) of Schedule 2 to the Vehicle Excise and Registration Act 1994(a);
- (c) a vehicle which is kept by a fire authority as defined by paragraph 5 of that Schedule;
- (d) an ambulance as defined by paragraph 6(2) of that Schedule; or
- (e) a vehicle owned by or being used for the transport of a person who has a disabled person's badge and which displays a current disabled person's badge issued under—
  - (i) section 21 of the Chronically Sick and Disabled Persons Act 1970(b), or
  - (ii) section 14 of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978(c).

3. The undertaker may require that an application to enter particulars of a vehicle on the exemptions register or to renew the registration of a vehicle—

- (a) shall include all such information as the undertaker may reasonably require; and
- (b) shall be made by such means as the undertaker may accept.

4. Registration of a vehicle upon the exemptions register, and the use to which that vehicle must be put to qualify as exempt from tolls, shall be subject to the imposition of such further conditions as the undertaker may reasonably impose.

5. Where the undertaker receives an application that complies with paragraph 3 to enter particulars of a vehicle on the exemptions register, or to renew the registration of a vehicle, and the vehicle falls within the descriptions set out in paragraph 2 it shall enter the particulars of that vehicle on the exemptions register within 20 working days of receiving such an application.

6. The undertaker shall remove particulars of a vehicle from the exemptions register—

- (a) in the case of a vehicle registered in relation to the holder of a disabled person's badge, when that person ceases to be an eligible person for a disabled person's badge as set out in paragraph 2(e);
- (b) in the case of any vehicle at the end of the period of 7 consecutive days beginning with the day on which a change in the keeper of the vehicle occurred, unless the undertaker renews the registration for a further period on application to it by or on behalf of the new keeper.

7. Where the registered keeper of a vehicle is aware that the vehicle has ceased or will cease to be a vehicle eligible to be entered on the exemptions register, the keeper shall notify the undertaker of the fact and the undertaker shall remove the particulars of the vehicle from the exemptions register as soon as reasonably practicable or from the date notified to the undertaker as the date on which it will cease to be a vehicle eligible to be recorded on the exemptions register.

8. If the undertaker is no longer satisfied that a vehicle is an exempt vehicle it shall—

- (a) remove the particulars of a vehicle from the exemptions register; and
- (b) notify the registered keeper.

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(a) 1994 c. 22.  
(b) 1970 c. 44.  
(c) 1978 c. 53.

9. Nothing in this Schedule shall prevent the making of a fresh application for particulars of a vehicle to be entered in the exemptions register after they have been removed from it in accordance with any provision of this Part of this Schedule.

## SCHEDULE 13

Article 2(1)

### MANCHESTER SHIP CANAL ACTS AND ORDERS

Manchester Ship Canal Act 1885 c. clxxxviii  
Manchester Ship Canal (Additional Lands) Act 1888 c. cxi  
Manchester Ship Canal (Alteration of Works) Act 1888 c. clxi  
Manchester Ship Canal (Tidal Openings, & c.) Act 1890 c. lxxiv  
Manchester Ship Canal (Various Powers) Act 1890 c. ccxxvii  
Manchester Ship Canal Act 1891 c. clxxxii  
Manchester Ship Canal Act 1893 c. iii  
Manchester Corporation (Ship Canal) Act 1893 c. xix  
Manchester Ship Canal (Additional Capital, & c.) Act 1893 c. xxiii  
Manchester Ship Canal (Surplus Lands) Act 1893 c. lxxiii  
Manchester Ship Canal Act 1894 c. clxix  
Manchester Ship Canal Act 1896 c. clxxxii  
Manchester Ship Canal Act 1897 c. cviii  
Manchester Ship Canal Act 1900 c. xxxvi  
Manchester Ship Canal Act 1904 c. ccxii  
Manchester Ship Canal (Bridgewater Canal) Act 1907 c. xv  
Manchester Ship Canal (Various Powers) Act 1907 c. xxx  
Manchester Ship Canal Act 1911 c. lvi  
Manchester Ship Canal Act 1919 c. xlvi  
Manchester Ship Canal Act 1920 c. cxlix  
Manchester Ship Canal Act 1924 c. lviii  
Manchester Ship Canal Act 1925 c. cxx  
Manchester Ship Canal (General Powers) Act 1926 c. lxxxiii  
Manchester Ship Canal Act 1933 c. lxvi  
Manchester Ship Canal Act 1936 c. cxxiv  
Manchester Ship Canal Act 1949 c. xxxvi  
Manchester Ship Canal Act 1950 c. lvi  
Manchester Ship Canal Act 1952 c. xiii

Manchester Ship Canal Act 1956 c. lxxx  
Manchester Ship Canal Act 1960 c. xlv  
Manchester Ship Canal Act 1962 c. liii  
Manchester Ship Canal Act 1966 c. xxvii  
Manchester Ship Canal Revision Order 1970 (S.I. 1971/191)  
Manchester Ship Canal Revision Order 1975 (S.I. 1975/2205)  
The Manchester Ship Canal (Black Bear Canal) (Local Enactments) Order 1976 (S.I. 1976/1084)  
Manchester Ship Canal Revision Order 1984 (S.I. 1984/50)  
Manchester Ship Canal Revision Order 1987 (S.I. 1987/1790)  
Manchester Ship Canal Harbour Revision Order 1992 (S.I. 1992/1268)  
The Manchester Ship Canal (Bridgewater Canal) Act 1907 (Amendment) Order 1996 (S.I. 1996/1484)  
The Manchester Ship Canal Harbour Revision Order 2009 (S.I. 2009/2579)

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order authorises Halton Borough Council to construct, operate and maintain a bridge between Runcorn and Widnes for vehicles over and in the River Mersey and St Helen's Canal and over the Manchester Ship Canal and Bridgewater Canal together with all the necessary related and ancillary works. For the purpose of the new bridge the Order authorises Halton Borough Council, compulsorily or by agreement to purchase land and rights in land and to use lands. It provides for the new bridge over the River Mersey to be subject to tolls payable by those who use the new bridge in vehicles, and for enforcement powers in respect of non-payment of such tolls. The Order also authorises the making of alterations to the highway network, the power temporarily to close the River Mersey, St Helen's Canal, Manchester Ship Canal and Bridgewater Canal, to remove vessels and to make byelaws.

A copy of the works plans and the land plans and book of reference mentioned in this Order and certified in accordance with article 59 (certification of plans, etc.) of this Order may be inspected free of charge at the offices of Halton Borough Council, Municipal Building, Kingsway, Widnes WA8 7QF.

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