
STATUTORY INSTRUMENTS

200X No. XXXX

TRANSPORT AND WORKS, ENGLAND

The River Tyne (Tunnels) Order [200X]

Made [200X]

Coming into force [200X]

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Whereas an application has been made to the Secretary of State for Transport, Local Government and the Regions ("the Secretary of State"), in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2000¹ made under sections 6, 7 and 10 of the Transport and Works Act 1992² ("the Act") and Sections 3 and 4 of the Tyne Tunnels Act 1998³ for an Order under section 3 and 5 of the former Act;

[And whereas the objections to that application have been withdrawn;]

[And whereas the Secretary of State is satisfied that the provision of an alternative right of way for each of the streets mentioned in Part II of Schedule 3 to this Order is not required;]

And whereas the Secretary of State has determined to make an Order giving effect to the proposals comprised in the application with modifications which in his opinion do not make any substantial change in the proposals;

And whereas 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 1964⁴;

And whereas notice of the Secretary of State's determination was published in the London Gazette on [2002];

Now, therefore, the Secretary of State in exercise of the powers conferred on him by sections 3 and 5 of, and paragraphs 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 of Schedule 1 to, the Act and Sections 3 and 4 of the Tyne Tunnels Act 1998 and by the Transport and Works (Description of Works Interfering with Navigation) Order 1992⁵ and all other powers enabling him in that behalf, hereby makes the following Order:

PART I

PRELIMINARY

Citation and commencement

1. This Order may be cited as the River Tyne (Tunnels) Order [2002] and shall come into force on [200X].

Interpretation

2. – (1) In this Order:

"the 1965 Act" means the Compulsory Purchase Act 1965⁶;

"the 1991 Act" means the New Roads and Street Works Act 1991⁷;

¹ S.I. 2000/2190

² 1992 c.42

³ 1998 c.i.

⁴ 1964 c. 40.

⁵ S.I. 1992/3230

⁶ 1965 c. 56.

⁷ 1991 c. 22.

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

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

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

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

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

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

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

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

"concession period" means the period during which tolls are charged in accordance with the terms of the concession agreement;

"the deposited plans" means the works plans and the land plans;

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

"the existing foot tunnels" means Works No. 3, 3A and 4 as set out in Part I of Schedule 1 to the Tyne and Wear Act 1976 together with all approaches, tunnels, lifts, stairs, escalators, subways, passages, means of ingress or egress, shafts, stagings, buildings, apparatus, plant, machinery and subsidiary and incidental works;

"the existing tunnels" means the existing foot tunnels and the Tyne Tunnel;

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

"highway" and "highway authority" have the same meaning as in the Highways Act 1980;

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

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

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

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

"new tunnel" means the new tunnel comprised in the authorised works together with:

(a) all tunnels, lifts, stairs, escalators, subways, passages, means of ingress or egress, shafts, stagings, buildings, apparatus, plant, machinery and subsidiary and incidental works; and

(b) all piles, fenders, booms, dolphins, embankments, abutments, wharves, walls, fences, drains, buildings and other works and conveniences, in the River Tyne or Howdon Basin and the banks, bed and foreshore thereof,

constructed or provided in connection therewith;

"operational land" shall, in respect of the tunnel crossing, have the meaning given to it in the Town and Country Planning Act 1990⁸;

"owner", in relation to land, means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple of land (whether in possession or reversion) and includes a person holding or entitled to the rents and profits of the land under a lease or tenancy having an unexpired term exceeding 3 years;

"the Port Authority" means the Port of Tyne Authority;

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

"street works", in relation to a street, has the same meaning as in Part III of the 1991 Act;

"street authority", in relation to a street, has the same meaning as in Part III of the 1991 Act;

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

"the tribunal" means the Lands Tribunal;

"Trinity House" means the Corporation of Trinity House of Deptford Strond;

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

"tunnel crossing" means the existing tunnels and the new tunnel together with

(a) the tunnel roads; and

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

⁸ 1990 c.8

"tunnel roads" means the roads that run through the Tyne Tunnel and the new tunnel and Works No. 1B, 1C, 1D, 1E, 2C, 7A (part), 7B (part), 7K (part) 7L (part) and 7Q.

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

"the undertaker" means the Tyne and Wear Passenger Transport Authority;

"undertaking" includes the undertaking of the undertaker in connection with this Order, the authorised activities, the tunnel crossing, the functions and the property vested in the undertaker by Article 3 of the Tyne Tunnel Order 1986; and

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

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in or on land or in the air-space over its surface, and references to the subsoil of any land include references to any cellar, basement, vault, arch or other construction forming part of any such land.

(3) All directions, distances, areas and dimensions stated in any description of works, powers or lands shall be construed as if the words "or thereabouts" were inserted after each such direction, distance, area and length.

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

PART II

WORKS PROVISIONS

Principal powers

Power to construct and maintain works

3. – (1) The undertaker may:

(a) construct and maintain the scheduled works; and

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

(2) Subject to article 4 below, the scheduled works shall be constructed in the lines or situations shown on the deposited plans and in accordance with the levels shown on the deposited sections.

(3) Subject to paragraph (5) below, the undertaker may carry out and maintain such other works (of whatever nature) as may be necessary or expedient for the purposes of, in connection with or in consequence of, the construction and maintenance of the scheduled works.

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

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

Power to Deviate

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

- (a) deviate laterally from the lines or situations shown on the works plans within the limits of deviation; and
- (b) deviate vertically from the levels shown for those works on the deposited sections -
 - (i) in respect of any structure in whole or in part beneath the River Tyne or Howdon Basin to any extent not exceeding 1 metre upwards;
 - (ii) in respect of any other structure to any extent not exceeding 2 metres upwards;
 - (iii) to any such extent downwards as may be necessary convenient or expedient.

Dredging etc

5. – (1) For the purpose of or in connection with the construction or maintenance of the authorised works constructed or to be constructed in the tunnel area, the undertaker may deepen, widen, dredge, scour, cleanse, alter or improve the bed of the river within the tunnel area or blast any rock in it.

(2) Subject to article 42, the undertaker may use, appropriate or sell or otherwise dispose of anything removed in exercise of the power conferred by paragraph (1) above.

Streets

Power to execute street works

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

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

(2) This article is subject to paragraph 3 of Schedule 9 to this Order.

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

Power to alter layout of streets

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

(2) Without prejudice to the specific powers conferred by paragraph (1) above but subject to paragraph (3) below, the undertaker may for the purpose of or in connection with the authorised works alter the layout of any street in or adjacent to which any authorised

works are constructed or to be constructed and, without prejudice to the generality of the foregoing, the undertaker may –

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

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

Stopping up of streets and extinguishments of rights

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

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

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

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

(4) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part I of the Land Compensation Act 1961⁹.

(5) This article is subject to paragraph 2 of Schedule 9 to this Order.

Temporary stopping up of streets

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

- (a) divert the traffic from the street; and

⁹ 1961 c. 33.

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

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

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

(4) Without prejudice to the generality of paragraph (1) above, the undertaker may exercise the powers of this article in relation to the streets specified in columns (1) and (2) of Schedule 4 to this Order to the extent specified, by reference to the letters and numbers shown on the works plans, in column (3) of that Schedule.

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

(a) in relation to any street specified as mentioned in paragraph (4) above 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) Works executed under this Order in relation to a highway which consists of or includes a carriageway shall be treated for the purposes of Part III of the 1991 Act (street works) as major highway works if-

(a) they are works of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of that Act (which defines what highway authority works are major highway works) and would have been major highway works had they been executed by the highway authority, or

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

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

(8) The provisions of the 1991 Act mentioned in paragraph (9) below and any regulations made, or code of practice issued or approved under, those provisions shall apply (with the necessary modifications) in relation to the stopping up, alteration or diversion of a street by the undertaker under the powers conferred by this article where no street works are executed in that street as they would apply if the stopping up, alteration or diversion were occasioned by street works executed in that street by the undertaker.

(9) The provisions of the 1991 Act referred to in paragraph (8) above are -

section 54 (advance notice of certain works),

section 55 (notice of starting date of works),

section 59 (general duty of street authority to co-ordinate works),

section 60 (general duty of undertakers to co-operate),
section 69 (works likely to affect other apparatus in the street),
section 76 (liability for cost of temporary traffic regulation),
section 77 (liability for cost of use of alternative route), and

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

Access to Works

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

Construction and maintenance of new or altered streets

11. – (1) Subject to paragraph (5) below, any street to be constructed under this Order and not comprised within the tunnel crossing shall be completed to the reasonable satisfaction of the highway authority and shall, unless otherwise agreed, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the highway authority.

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

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

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

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

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

Agreements with street authorities

12. – (1) A street authority and the undertaker may enter into agreements with respect to -

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

(b) the maintenance of the structure of any bridge or tunnel carrying a street over or under a railway or any part of the tunnel crossing;

(c) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or

(d) the execution in the street of any of the works referred to in articles 6 to 11 above.

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

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

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

Supplemental Powers

Discharge of Water

13. – (1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water for the purpose of or in connection with the authorised activities and for that purpose may lay down, take up and alter pipes and may, on any land shown within the limits of land to be acquired or used, make openings into, and connections with, a watercourse, public sewer or drain.

(2) The undertaker shall not discharge any water into any watercourse, public sewer or drain except with the consent of the authority to which it belongs and in the case of the River Tyne and Howdon Basin with the consent of the Port Authority; and such consent may be given subject to such terms and conditions as the authority may reasonably impose but shall not be unreasonably withheld.

(3) The undertaker shall not make any opening into a public sewer or drain except in accordance with plans approved by, and under the superintendence (if provided) of, the authority to which the sewer or drain belongs, but such approval shall not be unreasonably withheld.

(4) 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 or oil or matter in suspension.

(5) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991¹⁰.

¹⁰ 1991 c. 57.

(6) In this article:

(a) "public sewer or drain" means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, the Port Authority or a local authority;

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

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

Safeguarding works to buildings

14. – (1) Subject to the following provisions of this article, the undertaker may at its own expense and from time to time carry out such safeguarding works to any building lying within the limits of land to be acquired or used or within 50m of the limits of land to be acquired or used.

(2) Safeguarding works may be carried out -

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

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

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

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

(a) enter the building and any land belonging to it; and

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

(5) Before exercising a right:

(a) under paragraph (1) above to carry out safeguarding works to a building,

(b) under paragraph (3) above to enter a building,

(c) under paragraph (4)(a) above to enter a building or land, or

(d) under paragraph (4)(b) above to enter land,

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

(6) Where notice is served under paragraph (5)(a), (c) or (d) above, the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question of whether it is necessary or expedient to carry out the safeguarding works or to enter the building or land to be referred to arbitration under article 48 below.

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

(8) Where:

(a) safeguarding works are carried out under this article to a building, and

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

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

(9) Subject to article 47 below, nothing in this article shall relieve the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act.

(10) Any compensation payable under paragraph (7) or (8) shall be determined, in case of dispute, under Part I of the Land Compensation Act 1961.¹¹

(11) In this article "safeguarding works", in relation to a building means:

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

(b) any works the purpose of which is to remedy any damage which has been caused to the building by the authorised works; and

(c) any works the purpose of which is to secure the safe operation and use of the tunnel crossing or to prevent or minimise the risk of such operation and use being disrupted.

¹¹ 1961 c. 33.

Planning permission: supplementary matters

14A. – Planning permission which is deemed by virtue of a direction under section 90(2A) of the Town and Country Planning Act 1990 to be granted in relation to work authorised by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of the Town and Country Planning Act 1990.

Power to survey and investigate land

15. – (1) The undertaker may for the purposes of this Order:

- (a) survey or investigate any land shown within the limits of land to be acquired or used which may be affected by the authorised activities;
- (b) without prejudice to the generality of sub-paragraph (a) above, make trial holes in such positions as the undertaker thinks fit on the land to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a) above, carry out archaeological investigation on any such land;
- (d) place and/or leave on, in, under or over and remove from the land included in sub-paragraph (a) above apparatus for use in connection with the exercise of any of the powers conferred by sub-paragraph (a) or (b) above; and
- (e) enter on the land included in sub-paragraph (a) above for the purpose of exercising the powers conferred by sub-paragraph (a), (b) or (c) above.

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

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

- (a) shall, if so required, before or after entering the land produce written evidence of his authority to do so; and
- (b) may take with him such vehicles and equipment as are necessary to exercise any of the powers conferred by paragraph (1) above.

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

(5) The undertaker shall pay compensation for any damage occasioned by the exercise of the powers conferred by this article to the owners and occupiers of the land, such compensation to be determined, in case of dispute, under Part I of the Land Compensation Act 1961¹².

¹² 1961 c. 33.

Additional powers

16. – (1) Without prejudice to the other powers conferred by this Order or otherwise available to it, the undertaker may within the tunnel area for the purpose of or in connection with the carrying out and maintenance of the authorised works to be carried out within the tunnel area and notwithstanding any interference thereby with any public or private rights –

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

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

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

Prohibitions within the tunnel area

17. – (1) Notwithstanding anything in any other enactment or rule of law but subject to the provisions of this article, the Port Authority shall, at the request of the undertaker and at the undertaker's expense, at any time when it appears to the undertaker necessary, expedient or convenient for the purposes of the construction or maintenance of the new tunnel, by direction close the whole or any part of the tunnel area to navigation by all vessels or by any class of vessel.

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

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

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

- (a) navigate any vessel or cause or permit a vessel to be moored if the vessel concerned is subject to the closure,

(b) lay down or place any mooring or apparatus, including mains, sewers, drains and cables, or

(c) undertake or cause or permit any other operation or activity,

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

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

(6) Except in an emergency, the Port Authority shall at the undertaker's expense publish notice of any direction given under paragraph (1) in a newspaper circulating in Tyne and Wear not less than 14 days before the direction is to take effect.

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

(8) If complete closure of the tunnel area to all vessels or to any particular class of vessels is necessary at any time, the undertaker shall take all reasonable steps to secure that the minimum obstruction, delay or interference is caused to vessels which may be using or intending to use the tunnel area.

(9) Without prejudice to the provisions of article 20 (application of Part I of the Compulsory Purchase Act 1965) neither the undertaker nor the Port Authority shall be liable for any costs, damages or expenses whatsoever incurred by any person as a result, directly or indirectly, of any closure of the tunnel area under this article.

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

Protection of tunnel, etc.

18. – (1) A person may not without the consent in writing of the undertaker (which may be given subject to conditions) –

(a) use, for any purpose, any part of the authorised works;

(b) interfere with any part of the authorised works;

(c) 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; or

(d) moor any vessel within 50 metres (measured horizontally) of the new tunnel.

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

PART III
ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

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

(2) This article is subject to article 24(8) below.

Application of Part I of Compulsory Purchase Act 1965

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

(a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981¹³ applies; and

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

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

(a) section 4 (which provides a time limit for compulsory purchase of land) and paragraph 3(3) of Schedule 3 (which makes provision as to the giving of bonds) were omitted; and

(b) in section 11(1) (which confers power to enter on and to take possession of land subject to a notice to treat on giving not less than 14 days' notice) for the reference to 14 days' notice there were substituted -

(i) in a case where the notice to treat relates only to the acquisition of subsoil or the acquisition of an easement or other right over the land, a reference to notice of one month, or

(ii) in any other case, a reference to notice of 3 months.

Power to acquire new rights

21. – (1) The undertaker may compulsorily acquire such easements or other rights over any land referred to in paragraph (1) of article 19 above 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 to this Order), where the undertaker acquires a right over land under paragraph (1) above the undertaker shall not be required to acquire a greater interest in it.

¹³ 1981 c. 67.

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

Power to acquire subsoil only

22. – (1) The undertaker may compulsorily acquire so much of the subsoil of the land referred to in paragraph (1) of article 19 above as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

(3) Paragraph (2) above shall not prevent section 8 of the 1965 Act or article 27 below from applying where the undertaker acquires a cellar, vault, arch, basement or other construction forming part of a house, building or factory.

Vesting declarations

23. – (1) The Compulsory Purchase (Vesting Declarations) Act 1981¹⁴ shall apply as if this Order were a compulsory purchase order.

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

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

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

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

(b) published in the London Gazette and in a local newspaper circulating in the area in which the land is situated."

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

(5) In that section, subsections (5) and (6) shall be omitted and at the end there shall be substituted-

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

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

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

¹⁴ 1981 c. 66.

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

(a) in subsection (1), after "publication" there shall be inserted "in the London Gazette or in a local newspaper circulating in the area in which the land is situated"; and

(b) subsection (2) shall be omitted.

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

(8) References to the 1965 Act shall be construed as references to that Act as applied to the acquisition of land under article 19(1) above.

Temporary possession of land

Temporary use of land for construction of works

24. – (1) The undertaker may, for the purpose of or in connection with the carrying out of the authorised works -

(a) enter upon and take temporary possession of the land specified in columns (1) and (2) of Schedule 7 to this Order for the purposes specified in relation to that land in column (3) of that Schedule relating to the authorised works;

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

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

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

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

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

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

(6) Any dispute as to a person's entitlement to compensation under paragraph (5) above, or as to the amount of the compensation, shall be determined under Part I of the Land Compensation Act 1961¹⁵.

¹⁵ 1961 c. 33.

(7) Without prejudice to article 47 below, 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 of which compensation is payable under paragraph (5) above.

(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) above except that the undertaker shall not be precluded from -

- (a) acquiring new rights over any part of that land under article 21 above; or
- (b) acquiring any part of the subsoil (or rights in the subsoil) or that land under article 22 above.

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

Temporary use of land for maintenance of works

25. – (1) At any time during the maintenance period relating to any of the authorised works, the undertaker may:

- (a) enter upon and take temporary possession of any land within the limits of land to be acquired or used if such possession is reasonably required for the purpose of or in connection with maintaining the authorised works;
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) above shall not authorise the undertaker to take temporary possession of -

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

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

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary for the purpose for which the possession of the land was taken.

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

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

(7) Any dispute as to a person's entitlement to compensation under paragraph (6) above, or as to the amount of the compensation, shall be determined under Part I of the Land Compensation Act 1961.

(8) Without prejudice to article 47 below, 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) above.

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

(10) In this article "the maintenance period", in relation to any authorised work means the period of 5 years beginning with the date on which such authorised work is opened for use.

Compensation

Disregard of certain interests and improvements

26. – (1) In assessing the compensation (if any) payable to any person on the compulsory acquisition from him of any land under this Order, the tribunal shall not take into account -

(a) any interest in land, or

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

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

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

Supplementary

Acquisition of part of certain properties

27. – (1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 20 above) in any case where -

(a) a notice to treat is served on a person ("the owner") under the 1965 Act (as so applied) in respect of land forming only part of a house building or factory or of land consisting of a house with a park or garden ("the land subject to the notice to treat"); and

(b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the

sale of the land subject to the notice to treat and stating that he is willing and able to sell the whole ("the land subject to the counter-notice").

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

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

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

(a) without a material detriment to the remainder of the land subject to the counter-notice, or

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

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

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

(a) without material detriment to the remainder of the land subject to the counter-notice, or

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

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

(7) If on such reference the tribunal determines that -

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

(b) the material detriment is confined to a part of the land subject to the counter-notice,

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

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

(a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to

the counter-notice and without seriously affecting the amenity and convenience of the house, and

(b) the material detriment is not confined to a part of the land subject to the counter-notice,

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

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

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

Extinguishment and suspension of private rights of way

28. – (1) All private rights of way over land subject to compulsory acquisition under this Order shall be extinguished -

(a) as from the acquisition of the land by the undertaker, whether compulsorily or by agreement, or

(b) on the entry on the land by the undertaker under section 11(1) of the 1965 Act,

whichever is sooner.

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

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

(4) Any person who suffers loss by the interference with any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part I of the Land Compensation Act 1961.

(5) This article does not apply in relation to any right of way to which section 271 or 272 of the Town and Country Planning Act 1990¹⁶ (extinguishment of rights of statutory undertakers etc.) or paragraph 2 of Schedule 9 to this Order applies.

¹⁶ 1990 c. 8.

Use of subsoil

29. – (1) The undertaker may enter upon, take and use so much of the subsoil of any street within the limits of deviation or within the land the subject of article 19(1) as may be required for the purpose of the construction or maintenance of the authorised works without being required to acquire that subsoil or any right therein.

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

(3) Any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) above is exercised without the undertaker acquiring any part of that person's interest in the land and who suffers loss by the exercise of that power shall be entitled to compensation to be determined in case of dispute under Part I of the Land Compensation Act 1961.¹⁷

(4) Paragraph (2) above shall not apply to:

(a) any subway or underground building; or

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

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

Time limit for exercise of powers of acquisition

30. – (1) Subject to paragraph (2) below, the powers conferred by this Order to acquire land or rights over land compulsorily, and the power conferred by article 24 above to enter upon and take temporary possession of land, shall cease at the end of the period of 5 years beginning on the appointed day.

(2) Paragraph (1) above shall not prevent the undertaker remaining in possession of land in accordance with article 24 above after the end of that period, if the land was entered and possession of it was taken before the end of that period.

PART IV

OPERATIONAL

Power to operate, use and maintain the tunnel crossing

31. – The undertaker may operate, use and maintain the tunnel crossing.

Closing the tunnel

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

¹⁷ 1961 c. 33.

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

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

No mains or pipes

32A. – (1) Subject to paragraph (2) below, notwithstanding anything contained in the Highways Act 1980 or in any other enactment no person shall enter upon, break up or interfere with Works Nos. 3A, 4A, 5 or 6A or the carriageways and footways of the same for the purpose of laying down any main, pipe or wire or executing any work therein, thereon or thereunder, except with the consent of the undertaker and in accordance with such terms, conditions or and subject to such charges as the undertaker may determine.

(2) The consent of the undertaker to the breaking up of and interference with any of the said works or the carriageways and footways of the same for the purposes of laying down water mains, water pipes or electric lines therein shall not be withheld unreasonably and that 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 48 below.

Obstruction of works and trespass on the tunnel crossing

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

(2) Any person who -

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

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

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

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

tunnel crossing and may, by himself, or with such assistance as he shall think necessary, stop and prevent the person so in default from using the same.

Traffic control

34. – (1) The undertaker may for the purpose of or in connection with the authorised activities, place or maintain traffic signs of a type prescribed by regulations made under section 64(1)(a) of the Road Traffic Regulation Act 1984¹⁸ ("the 1984 Act") or of a character authorised by the Secretary of State on or near any street leading to or from the tunnel crossing.

(2) The undertaker:

(a) shall consult with the traffic authority as to the placing of signs, and

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

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

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

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

Power to contract for police services

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

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

(3) In this article "chief officer of police", "police authority" and "police force" have the same meaning as in the Police Act 1964.¹⁹

Power to make byelaws

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

¹⁸ 1984 c. 27.

¹⁹ 1964 c. 48.

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

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

(k) to prohibit a person from obstructing any action taken by a constable or an appointed person for the purpose of removing a vehicle in accordance with the regulations;

(l) to regulate traffic and the speed of traffic in the tunnel crossing;

(m) to ensure the safety of vehicles passing through the tunnel crossing and in particular to restrain smoking or use of exposed flames;

(n) to restrict and regulate the passage of dangerous goods or traffic through the tunnel crossing;

(o) for regulating the passage of bicycles and other vehicles on ways and other places intended for the use of persons on foot within the tunnel crossing; and

(p) for prohibiting or restricting the placing or leaving of any vehicle without its driver on any part of the tunnel crossing.

(3) (a) Byelaws under this article may –

(i) designate places within the tunnel crossing at which tolls (other than tolls with respect to which a prepayment has been made) are to be paid;

(ii) make provision as to the persons by whom, and the manner in which, such tolls are to be paid;

(iii) make provision for securing that vehicles in respect of which tolls are payable do not use the tunnel crossing without payment of the tolls; and

(iv) make provision for preventing a vehicle which, having used the tunnel crossing, has arrived at the place at which a toll is payable in respect of it from proceeding beyond that place without a toll having been paid.

(b) Byelaws made under this article shall provide for a notice specifying -

(i) the categories of vehicles in respect of which tolls are payable, and

(ii) the amount of the tolls in respect of each category to be displayed at each place designated in accordance with paragraph (3)(a)(i) above.

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

(5) Without prejudice to the terms of paragraph (4) where the undertaker considers it expedient to do so it may prosecute legal proceedings in respect of offences under this Order, or any other legislation which applies to the tunnel or would have applied to the tunnel had it been a highway as if it were a highway.

(6) Without prejudice to the provisions of paragraph (4) a person who without reasonable excuse -

(a) refuses or fails to pay a toll for which he is liable, or

(b) attempts to evade payment of such a toll,

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

(7) Without prejudice to the taking of proceedings for an offence included in byelaws by virtue of paragraph (4) above, if the contravention of, or failure to comply with, any byelaw under this article is attended with danger or annoyance to the public or the undertaker or hindrance to the undertaker in the operation of the tunnel crossing, the undertaker may summarily take action to obviate or remove the danger, annoyance or hindrance.

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

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

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

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

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

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

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

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

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

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

(16) The provisions of the Road Traffic Offenders Act 1988²⁰ in relation to evidence shall apply to the prosecution of offences under this provision.

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

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

(19) In this article –

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

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

“prescribed” means prescribed by byelaws under this Order.

PART V

CONCESSION AND FINANCING ARRANGEMENTS

Power to charge tolls

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

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

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

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

(a) with the appointed day, as respects the Tyne Tunnel; and

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

(5) Where tolls payable under or by virtue of this Order remain unpaid after they have become due for payment, the person to whom they are payable may recover from the person liable to pay them the amount of the tolls together with all other reasonable costs and

²⁰ 1988 c. 53.

expenses including administrative expenses, enforcement expenses and interest arising out of any such failure to pay.

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

(7) The toll chargeable in respect of a vehicle shall -

(a) during the concession period, be at a level determined in accordance with the terms of the concession agreement; and

(b) at all other times, be at such level as the undertaker may from time to time see fit.

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

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

(10) Tolls and charges may not be charged in respect of –

(a) a vehicle being used in the discharge of the functions of a fire authority under the Fire Services Acts 1947 to 1959 or which would otherwise be an exempt vehicle under paragraphs 4 and 5 of Schedule 2 to the Vehicle Excise and Registration Act 1994²¹;

(b) a vehicle being used for police purposes;

(c) a vehicle exempt from duty under the Vehicles Excise and Registration Act 1994 by virtue of section 7(4) of that Act (civil defence vehicles);

(d) a vehicle exempt from duty under the Vehicles Excise and Registration Act 1994 under paragraphs 6 to 8 of Schedule 2 to that Act (ambulances);

(e) a vehicle being driven by a disabled person, or being used for the carriage of one or more disabled persons, which displays a current disabled person's badge issued under –

(i) section 21 of the Chronically Sick and Disabled Persons Act 1970²², or

(ii) section 14 of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1970²³; or

which has been issued with a token or permit to like effect by the undertaker.

(f) a vehicle being used in connection with –

(i) the collection of tolls; or

²¹ 1994 c.22
²² 1970 c. 44.
²³ 1978 c. 53.

- (ii) the inspection, maintenance, improvement or renewal of, or other dealing with, the tunnel crossings or toll plaza areas or any of the tunnel roads carried through the tunnel crossings (or any structure, works or apparatus in, on, under or over any of the tunnel crossings);
- (g) a vehicle used for naval, military or air force purposes, while being driven by persons entitled to the orders of a member of the armed forces of the Crown;
- (h) a vehicle which, having broken down in the tunnel crossing while travelling in one direction, is travelling in the opposite direction otherwise than under its own power; or
- (i) a vehicle of a description specified in an order made by the Secretary of State as a description of a vehicle in respect of which tolls or charges may not be levied.

Power to dispose, transfer, lease, etc, the tunnel crossing or the authorised activities

38. - (1) The undertaker may at any time or times and for any period or periods transfer, assign, lease, sub-lease, mortgage, charge or otherwise dispose of or deal with the whole or any part of its undertaking and the recipient may, to that extent, carry out the authorised activities in respect of that part of its undertaking.

(2) Without prejudice to paragraph (1), the undertaker may enter into one or more concession agreements and for that purpose may, pursuant to any such concession agreement or otherwise, confer such of the authorised activities on a concessionaire on such term as it sees fit.

(3) Any agreement under subsection (2) above may provide for the exercise of the powers of the undertaker in respect of the authorised activities or any part thereof, and for the transfer to any person of the authorised activities or any part thereof together with the rights and obligations of the undertaker in relation thereto.

(4) The undertaker may enter into arrangements with any concessionaire for the collection of tolls or charges and for their payment over to the undertaker.

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

Application of landlord and tenant law

38A. – (1) This article applies to any agreement for leasing to any person the whole or any part of the tunnel crossing or the right to operate the same, and any agreement entered into by the undertaker with any person for the carrying out of the authorised activities or any part of thereof, so far as any such agreement relates to the terms on which any land is subject to a lease granted by or under that agreement.

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

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

(a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;

(b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or

(c) restrict the enforcement (whether by action for damages or otherwise) by an party to the lease of any obligation of any other party under the lease.

PART VI

MISCELLANEOUS AND GENERAL

Saving for Trinity House

39. Nothing in this Order shall prejudice or derogate from any of the powers, rights or privileges, or the jurisdiction or authority of Trinity House.

Protection of certain persons

40. For the protection of the persons specified in the several Parts of that Schedule, Schedule 8 shall have effect.

Statutory undertakers, etc

41. Schedule 9 shall have effect.

Minerals

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

Application, modification and exclusion of miscellaneous enactments

43. Schedule 10 to this Order shall have effect.

Repeal of enactments

44. Schedule 11 to this Order shall have effect.

Certification of plans, etc

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

Service of notices

46. – (1) A notice or other document required or authorised to be served for the purposes of this Order may be served by post.

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

(3) For the purposes of section 7 of the Interpretation Act 1978²⁴ as it applies for the purposes of this article, the proper address of any person in relation to the service on him of a notice or document under paragraph (1) above is, if he has given an address for service, that address, and otherwise -

(a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and

(b) in any other case, his last known address at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and his name or address cannot be ascertained after reasonable enquiry, the notice may be served by -

(a) addressing it to him by name or by the description of "owner", or as the case may be "occupier", of the land (describing it); and

(b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

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

No double recovery

47. 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

48. Unless otherwise agreed, any difference under any provision of this Order (other than in relation to any matter otherwise provided for in Schedules 8 or 9 or a difference which falls to be determined by the tribunal) shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after notice in writing to the other) by the President of the Institution of Civil Engineers.

Exemption from rates

49. Notwithstanding anything contained in any enactment the new tunnel and the carriageways and footways thereof, and the buildings (not being office buildings) machinery, apparatus and works used in connection with the new tunnel shall not be assessed to any local rate.

²⁴ 1978 c. 30.

Signed by Authority of the
Secretary of State for
Transport, Local Government
and the Regions

Head of Charging and
Local Transport Division,
Department of Transport,
Local Government and the Regions

[200X]

SCHEDULES

SCHEDULE 1

Article 1

SCHEDULED WORKS

In the Metropolitan Borough of North Tyneside -

- Work No. 1 A toll plaza including amendments to the existing A19 trunk road southbound carriageway comprising: -
- Work No. 1A Widening of the existing A19 trunk road (140 metres in length) commencing at a point below the Metro bridge over the A19 trunk road (bridge no.1187), passing southwards terminating at a point 137 metres south of the said bridge.
- Work No. 1B New toll plaza vehicular area (510 metres in length and 55 metres in width) including toll booths commencing at a point 137 metres south of Metro bridge over A19 trunk road (bridge no. 1187), passing southwards and terminating at a point 647 metres south of the said bridge.
- Work No. 1C A road (292 metres in length) commencing at a point on the East Howdon bypass/ Howdon Road roundabout, 330 metres southwest of the Metro bridge over the A19 trunk road (bridge no. 1187), passing west then south-westwards and terminating at a point 73 metres north-west of East Howdon bypass and 420 metres south of the said bridge.
- Work No. 1D A road (153 metres in length) commencing at a point 25 metres east of the A19 trunk road southbound carriageway and 275 metres south of the Metro bridge over the A19 trunk road (bridge no. 1187), passing south-eastwards and terminating at a point on the East Howdon bypass, 215 metres north of Mitford Street.

- Work No. 1E A new administration building, west of the new toll plaza (Work No. 1B) and east of Howdon Bypass, at point 320 metres south of Metro Bridge over A19 (bridge no. 1187), including a car parking area (50 metres in length by 30 metres in width) south west of the new administration building and west of East Howdon bypass.
- Work No. 1F An emergency crossover (13 metres in length) commencing at a point 422 metres south of Metro bridge over the A19 trunk road (bridge no. 1187), passing westwards.
- Work No. 1G A retaining wall (85 metres in length, maximum 8 metres in height) commencing at a point 561 metres south of the Metro bridge over the A19 (bridge no. 1187), 79 metres west of Mitford Street, passing southwards and terminating at a point 645 metres south of the said bridge and 60 metres west of Brinkburn Street.
- Work No. 1H A retaining wall (130 metres in length maximum 6.4 metres in height) commencing at a point 519 metres south of Metro bridge (bridge no. 1187), 15 metres east of existing A19 northbound carriageway, passing southwards and terminating at a point 647 metres south of said bridge and 70 metres west of Brinkburn Street.
- Work No. 2 Amendments to existing toll plaza and A19 trunk road northbound carriageway comprising: -
- Work No. 2A Widening and realignment of existing A19 trunk road (793 metres in length) commencing at a point 8 metres south of the Metro bridge over the said road (bridge no. 1187), passing southwards and terminating at a point 48 metres north west of the existing tunnel administration building.
- Work No. 2B A crossover (100 metres in length) on the A19 trunk road commencing at a point 8 metres south of the Metro bridge over the said road (bridge no. 1187), passing southwards and terminating at a point 108 metres south of the said bridge.
- Work No. 2C A realignment of existing toll plaza (250 metres in length), including new tollbooths, continuing on from Work No. 2A, passing west then northwards and terminating at a point 38 metres south west of the existing tunnel portal structure.
- Work No. 2D A realignment of the existing A19 Trunk Road, A19 roundabout (part of) and entrance to existing toll plaza (225 metres in length) commencing at a point 90 metres west of Meldon Street, passing southwards then west and terminating at point 15 metres north west of the existing tunnel administration building.
- Work No. 2E A realignment of the existing A19 roundabout (part of) (95 metres in length) commencing at the termination of Work No. 2A, passing eastwards and terminating at a point 128 metres west of the existing tunnel administration building.

- Work No. 3A A tunnel and road (321 metres in length) continuing on from Work No. 1C, commencing at a point 647 metres south of the Metro bridge over the A19 (bridge no. 1187) passing southwards and terminating at a point 83 metres south of Tyne View Terrace.
- Work No. 3B A vertical escape shaft from the existing road tunnel, between the A19 / A185 tunnel roundabout and Tyne View Terrace, 130 metres west of the existing tunnel administration building.
- Work No. 4A A tunnel (of the immersed tube type) and road (211 metres in length) under the River Tyne and Howdon Basin continuing on from Work No. 3A, commencing at a point 93 metres south of Tyne View Terrace, passing southwards and terminating at the borough boundary 304 metres south of Tyne View Terrace.
- Work No. 4B Remodelling of Howdon Basin comprising a pier or quay extension (100 metres in length, 22 to 40 metres in width) over and above Work No. 4A, new sheet pile retaining walls (220 metres in length) around Howdon Basin, reconfiguration of the existing Howdon Basin and demolition of part of existing quay (32 metres by 32 metres).
- Work No. 4C New quay extension 45 metres in length, commencing at a point 125 metres east of Howdon Basin.
- Work No. 4D Armoured ship protection to immersed tube tunnel (Work No. 4A) south of Howdon Basin extending 60 metres towards the centre of the River Tyne over a width of 80 metres from the southern limit of Work No. 4B.

In the Metropolitan Borough of South Tyneside -

- Work No. 5 A tunnel (of the immersed tube type) and road (145 metres in length) under the River Tyne, commencing at the borough boundary at a point 250 metres north of Tyne Street passing southwards and terminating at a point 104 metres north of Tyne Street.
- Work No. 6A A tunnel and road (839 metres in length) continuing on from Work No. 5, commencing at a point 104 metres north of Tyne Street, passing south then south-eastwards and terminating at a point on 4 metres north of the south face of the existing Howard Street (A185) bridge over the existing Tyne Tunnel approach road, 43 metres south west of Stothard Street.
- Work No. 6B A road (part realignment of Tyne Street) (236 metres in length), commencing at a point 27 metres south of the Pedestrian Tunnel building, passing clockwise in a loop around the said building and terminating at the same point.
- Work No. 6C A road on the line of the former Ferry Street (part of) (100 metres in length), commencing at a point 30 metres south of the Pedestrian Tunnel building, passing southwards and terminating at a point 17 metres north of Chaytor Street.

- Work No. 6D A realignment of Chaytor Street (112 metres in length) including a roundabout at the junction with Ferry Street and Work No. 6C. Commencing at a point 52 metres east of Ferry Street junction, passing westwards and terminating at a point 60 metres west of the said junction.
- Work No. 6E A vertical escape shaft from the existing tunnel, 5 metres south of the existing ventilation building and 19 metres west of Ferry Street.
- Work No. 6F A road (160 metres in length) commencing at a point on the western end of Friar Way, passing south-westwards and terminating at a point on Ferry Street 20 metres north of the Grange Road junction.
- Work No. 6G A ventilation building, connecting ventilation tunnel, retaining wall and hard landscaping, east of the tunnel (Work No. 6A) and south west of Howard Street (A185) / Priory Road roundabout.
- Work No. 7 A road interchange to replace the existing interchange comprising: -
- Work No. 7A A realignment and improvement of the Tyne Tunnel approach road and the A19 trunk road (373 metres in length), including new carriageway, commencing at a point 75 metres north west of the existing Howard Street bridge (A185), passing south-westwards and terminating at a point 10 metres south of the Metro bridge over the A19 trunk road (bridge no. 1027).
- Work No. 7B A road (355 metres in length) commencing at a point 56 metres north west of Howard Street Bridge (A185) passing south-eastwards looping round to head north-eastwards and terminating at a point 5 metres south west of the existing tunnel buildings.
- Work No. 7C A road bridge over Work Nos. 7A, B, K and L to carry traffic to/from A19 towards Howard Street (A185)/Priory Road (B1297) roundabout continuing on from Work No. 7B, passing north-eastwards and terminating at a point 70 metres north east of the existing tunnel buildings.
- Work No. 7D A road (43 metres in length) continuing on from Work No. 7C, passing north-eastwards and terminating at the Howard Street (A185)/Priory Road (B1297) roundabout.
- Work No. 7E A realignment and enlargement of the existing Howard Street (A185)/Priory Road (B1297) roundabout (178 metres in length) commencing at a point 22 metres south east of Russell Street, passing in a clockwise direction and terminating at the same point.
- Work No. 7F A realignment of Priory Road (B1297) (31 metres in length) commencing at a point 32 metres south of St. Paul's Road, passing eastwards and terminating at point 30 metres south of the said road.
- Work No. 7G A realignment of Howard Street (A185) (60 metres in length) commencing at a point on the junction of the Howard Street (A185) / Priory Road (B1297) roundabout, passing westwards and terminating at a point 60 metres west from said junction.

- Work No. 7H A road bridge and road (total 21 metres in length) to replace the existing bridge carrying Howard Street (A185) over the Tyne Tunnel approach road (Work Nos. 6A, 7A & 7B) continuing on from Work No. 7G, passing westwards and terminating at point 69 metres east of St. Bede's Roman Catholic School and 9 metres north west of existing Howard Street bridge.
- Work No. 7J A realignment of Howard Street (A185) (122 metres in length) continuing on from Work No. 7H commencing at a point 81 metres west of the junction at Howard Street / Priory Road roundabout, passing westwards and terminating at a point 65 metres east from the junction at Howard Street/Monkton Terrace roundabout.
- Work No. 7K A realignment and improvement of the Tyne Tunnel approach road and the A19 trunk road (283 metres in length) including a new carriageway continuing on from Work No. 6A, passing south-westwards and terminating at the south face of the Metro bridge over the A19 trunk road (bridge no. 1027).
- Work No. 7L A slip road and layby area (202 metres in length) from the Tyne Tunnel approach road to the new roundabout at end of Straker Street (Work No. 7S) commencing at south side of Howard Street bridge (A185), passing south-eastwards and terminating at a point 32 metres south east of former mineral railway bridge.
- Work No. 7M A realignment and improvement to the A185 link road (164 metres in length) from Work No. 7E to Work No. 7S, commencing at a point 39 metres south of the junction of Priory Road to the existing roundabout, passing southwards and terminating at a point 30 metres south east of the former mineral railway bridge.
- Work No. 7N A retaining wall (68 metres in length 7 metres maximum height) commencing at a point on the north face of the existing Howard Street bridge, passing southwards and terminating at a point 45 metres south of the said bridge.
- Work No. 7P A retaining wall (170 metres in length 6 metres maximum height) continuing on from Work No. 7N, commencing at a point 28 metres east of Epinay Walk and 4 metres west of the existing tunnel buildings, passing south-west and going in an anticlockwise direction and terminating at a point 95 metres east of Epinay Walk and 72 metres south east from the said building.
- Work No. 7Q Buildings, parking and waiting areas adjacent to Work No. 7B and extending below Work No. 7C terminating at the existing Howard Street bridge (A185).
- Work No. 7R A slip road (154 metres in length) from Work No. 7B commencing at a point 57 metres south east of the existing tunnel buildings, passing south-eastwards and terminating at a point 10 metres south the Metro bridge over A19 trunk road (bridge no. 1027).
- Work No. 7S A roundabout at west-end of Straker Street (A185) (130 metres in length) commencing at a point 40 metres south east of the existing former mineral railway bridge, passing in a clockwise direction and terminating at the same point.

- Work No. 7T A realignment of Straker Street (A185) (16 metres in length) commencing at a point 29 metres east of the existing junction of Straker Street with the existing A19/A185 roundabout, passing eastwards and terminating at a point 45 metres east of said junction.
- Work No. 7U A link road (47 metres in length) from Work No.7S, commencing at a point 60 metres north of the Metro railway bridge (bridge no. 1027), passing south-westwards and terminating at a point 17 metres north of the said bridge.
- Work No. 7V A slip road (156 metres in length), including widening of the existing A19 trunk road, continuing on from Work No. 7U, passing south-westwards and terminating at a point 128 metres south west of the Metro railway bridge (bridge no. 1027).
- Work No. 7W A realignment of the north east wing wall of the Metro railway bridge (bridge no. 1027) (11 metres in length).

SCHEDULE 2

Articles 6 and 7

STREETS SUBJECT TO WORKS

STREETS SUBJECT TO STREET WORKS AND ALTERATION OF LAYOUT

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street Subject to Works</i>
In the Metropolitan Borough of North Tyneside	<p>Existing A19 northbound realigned in position and level to accommodate access for northbound traffic from toll plaza.</p> <p>Existing roundabout junction at southern end of A19; Carriageway realigned to facilitate link to local highway network from toll plaza for north bound traffic.</p> <p>Link road (south side) between the roundabout on the southern end of the A19 and the roundabout at the southern end of the Howdon bypass; Delineation kerbing required to close part of existing junction.</p> <p>Existing toll plaza; Reconfigured to accommodate new toll plaza. Access to all existing tunnel facilities to be maintained.</p> <p>East Howdon bypass – Northbound carriageway; Kerbing removed to accommodate new access to tunnel staff facility and access to local highway network from emergency turn back area.</p> <p>Roundabout at junction of East Howdon bypass and Howdon Road; Kerbing removed to accommodate new public transport link.</p>
In the Metropolitan Borough of South Tyneside	<p>Chaytor Street – North side of junction with Ferry Street; Kerbing and footway altered to form new junction.</p> <p>Chaytor Street – North side at junction with Commercial Road; New kerbing and footway provided across junction with Commercial Road.</p> <p>Curlw Road – West end at junction with Tyne Street; Demarcation kerbing and turning facility required.</p> <p>Chaytor Street – Between Commercial Road and Ferry Street junctions; pedestrian crossing to be constructed to facilitate footpath link.</p> <p>Commercial Road – To the front of properties 45 to 50; carriageway width reduced and new carriageway introduced (at reduced width) to maintain access to</p>

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street Subject to Works</i>
<p>In the Metropolitan Borough of South Tyneside</p>	<p>properties.</p> <p>Ferry Street – east side at junction with Ormonde Street new kerb and footway provided across former junction.</p> <p>Ferry Street – East side slightly north of Grange Road junction; Kerbing and footway removed to facilitate new junction.</p> <p>Staple Road – East side; Kerbing and footway provided across former junction with Stanley Street.</p> <p>Stanley Street – West end, turning facility required.</p> <p>Howard Street at existing A19 overbridge; carriageway realigned to accommodate new bridge. Footpaths and bus stopping facility to be replaced.</p> <p>A185 from existing roundabout junction adjacent to St Paul’s Estate, south to new roundabout on A185 on the western end of the River Don overbridge; Carriageway and footways to be realigned to accommodate new layout.</p> <p>Western arm of existing roundabout at junction of A185 and A19; Realigned to provide off-slip to new compact spiral junction.</p> <p>Existing A19 carriageways both north and southbound; Various accommodation works required to provide new carriageways.</p> <p>Existing and southbound; Realigned in position and level to accommodate new tunnel access.</p>

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 to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New street to be provided</i>
In the Metropolitan Borough of North Tyneside	A19 Trunk road – Southbound carriageway including verge and embankment.	Between points NS1 and NS2.	Work Nos. 1A, 1B and 2D(part)
	A19 Trunk road – northbound carriageway including verge and embankment.	Between points NS3 and NS4.	Work No. 2A
	A19 Roundabout.	From point NS2 in a clockwise direction to the point NS2.	Work Nos. 2A(part), 2D(part) and 2E(part)
	To the extent that it comprises a street the toll plaza from tunnel portal to A19 roundabout.	Between points NS5 and NS6.	Work No. 2C
	Footpath/Cycleway on land east of A19 trunk road.	Between points NSF4 and NSF5.	Footpath/Cycleway to be provided between points NSF4 and A1 and between points A2 and NSF5.
In the Metropolitan Borough of South Tyneside	Tyne Street	Between points SS1 and SS2 and between points SS3 and SS4	Work Nos. 6B and 6C
	Curlew Road	Between points SS4 and SS5	Work No. 6B and 6C
	Commercial Road	Between points SS4 and SS6	Work No. 6B and 6C
	Chaytor Street	Between points SS28 and SS29	Work No. 6D
	Footpaths/cycleway north of Tyne Street, south of River Tyne.	Area SSF1.	Footpath to be provided between points B1 and B3; and footpath to be provided between points B2 and B3.
	Footpaths in landscaped area bounded by Commercial Road, Chaytor Street, Tyne Street and the former	Area SSF2.	

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New street to be provided</i>
<p>In the Metropolitan Borough of South Tyneside</p>	<p>Ferry Street.</p> <p>Footways in area bounded by Ferry Street, Ormonde Street and Commercial Road.</p> <p>Commercial Road.</p> <p>Ormonde Street</p> <p>Footway between Ferry Street and Dunn Street School</p> <p>Footway, carriageway and verge of Howard Street.</p> <p>Footway, carriageway and verge of Priory Road.</p> <p>Footway, carriageway and verge of A185.</p> <p>To the extent that it comprises a street the footway, carriageway and verge of A19 and Tyne Tunnel approach road.</p> <p>Existing roundabout at Junction of A185, A19 etc.</p> <p>Footway, carriageway and verge on A185.</p> <p>Footway, carriageway and verge on A19.</p> <p>Footway linking A185 to south side of Howard Street.</p> <p>Link footway from, footway linking A185 to south side of Howard Street, to roundabout at junction of Howard Street, Priory Road and A185.</p>	<p>Area SSF3.</p> <p>Between points SS7 & SS8.</p> <p>Between points SS8 & SS9.</p> <p>Between points SSF4 And SSF5</p> <p>Between points SS18 and SS19.</p> <p>Between points SS20 and SS21.</p> <p>Between points SS22 and SS23.</p> <p>Between points SS16 and SS17.</p> <p>From point SS17 clockwise to same position.</p> <p>Between points SS24 and SS25.</p> <p>Between points SS26 and SS27.</p> <p>Between points SSF8 and SSF9.</p> <p>Between points SSF10 and SSF11.</p>	<p>Footpath to be provided between points B4 and B5; and footpath to be provided between points B6 and B7.</p> <p>Work No. 6F</p> <p>Work Nos. 7G, 7H and 7J.</p> <p>Work Nos. 7F and 7E (Part).</p> <p>Work Nos. 7E (Part) and 7M.</p> <p>Work Nos. 7A (Part), 7B (Part), 7K (Part), 7L(Part), 7Q(Part) and 7R(Part).</p> <p>Work Nos. 7A (Part), 7B (Part), 7K (Part), 7L (Part), 7M (Part), 7R (Part), and 7S (Part).</p> <p>Work Nos. 7S (Part) and 7T.</p> <p>Work Nos. 7A (Part), 7K (Part), 7R (Part), 7U (Part) and 7V.</p> <p>Work Nos. 7E (Part), 7G (Part) and 7M (Part).</p> <p>Work Nos. 7E (Part), 7G (Part) and 7M (Part).</p>

SCHEDULE 3

STREETS TO BE STOPPED UP

PART II

STREETS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be affected</i>	<i>(3)</i> <i>Extent of stopping up</i>
In the Metropolitan Borough of North Tyneside	Footpath adjacent to the A19 trunk road southbound carriageway. Footpath between A19 trunk road and Howdon Bypass.	Between points NSF1 and NSF2. Between points NSF2 and NSF3.
In the Metropolitan Borough of South Tyneside	Stanley Street carriageway and footway. Street or highway west of Stothard Street. Footpath linking south side of Salem Street to carriageway extending westward from north end of Stothard Street.	Between points SS10 and SS11. Between points SS12, SS13, SS14 and SS15. Between SSF6 and SSF7.

SCHEDULE 4

Article 9

STREETS TO BE TEMPORARILY STOPPED UP

<i>(1)</i> Area	<i>(2)</i> Street to be stopped up	<i>(3)</i> Extent of temporary stopping up
In the Metropolitan Borough of North Tyneside	A19 Trunk Road	Southbound between points NT1A and NS1 Northbound between points NS3 and NT3A
	Slip road from A193 Roundabout southbound to A19 Trunk Road	Between points NT1B and NT1C
	Slip road from A19 Trunk Road to A193 Roundabout	Between points NT3C and NT3B
	Footpath/cycleway on land east of A19 trunk road.	Between points NTF1, NTF2 and NSF4.
	Access track on land east of A19 trunk road.	Between points NT1 and NT2.
	A187 East Howdon Bypass and roundabout (part of).	Between points NT3 and NT4.
	A187 East Howdon Bypass.	Between points NT5 and NT6.
	Link road between A19 roundabout and A187 East Howdon Bypass roundabout.	Between points NT7 and NT8.
	Tyne View Terrace.	Between points NT9 and NT10.
In the Metropolitan Borough of South Tyneside	Quayside walkway on southern banks of River Tyne.	Between STF1 and STF2.
	Chaytor Street.	Between points ST1 and ST2.
	Ferry Street – footway on eastern side.	Between STF3 and STF4.
	Staple Road – footway on eastern side.	Between STF4 and STF5.
	High Street.	Between ST3 and ST4.
	Dee Street – footway on eastern side.	Between STF6 and STF7.
	Salem Street.	Between ST5 and ST6.

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Note: Unless the contrary is provided the stopping up of any street in the above table shall include all associated footways, carriageways and verges

SCHEDULE 5

Article 10

ACCESS TO WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Description of Access</i>
In the Metropolitan Borough of North Tyneside	<p>Access No. NA2 – from A187 East Howdon Bypass roundabout.</p> <p>Access No. NA3 – from A187 East Howdon Bypass</p> <p>Access No. NA4 – from A187 East Howdon Bypass southern roundabout.</p> <p>Access No. NA5 – from Tyne View Terrace</p> <p>Access No. NA6 – from Tyne View Terrace</p>
In the Metropolitan Borough of South Tyneside	<p>Access No. SA1 – from Chaytor Street North at the junction of Ferry Street.</p> <p>Access No. SA2 – from Chaytor Street North at the junction with Commercial Road.</p> <p>Access No SA3 – from Chaytor Street South at the junction with Commercial Road. Access works will require removal of a section of existing footpath on the south side of Chaytor Street.</p> <p>Access No. SA4 – from Ferry Street East at the junction with Ormonde Street.</p> <p>Access No. SA5 – from Ferry St East.</p> <p>Access No. SA6 – from Salem Street at Dee Street junction.</p> <p>Access No. SA7 – from Howard Street north toward Stothard Street new access to be formed.</p> <p>Access No. SA8 – from Howard Street north toward Stothard Street new access to be formed.</p>

SCHEDULE 6

Article 21

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 prejudice to the generality of paragraph 1 above, the Land Compensation Act 1973²⁵ shall have effect subject to the modifications set out in sub-paragraphs (2) and (3) below.

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

(a) in subsection (1) for the words “land is acquired or taken” there shall be substituted the words “a right over land is purchased”; and

(b) in subsection (1) 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 below –

(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”.

Adaptation 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 read (according to the requirements of the particular context) as referring to, or as including reference to-

(a) the right acquired or to be acquired; or

²⁵ 1973 c. 56.

(b) the land over which the right is or is to be exercisable.

(2) Without prejudice to the generality of sub-paragraph (1) above, Part I 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) 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 his, 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 (provision 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 a right would apart from this section fall to be determined by the Lands Tribunal (“the tribunal”), and

(b) before the tribunal has determined that question the person satisfies the tribunal that he has an interest which he is able and willing to sell in the whole of the relevant land, and –

(i) where the land consists of a house, building or manufactory, that the right cannot be purchased without detriment to that land, or

(ii) where the 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 Tyne (Tunnels) Order [200X] (“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 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 six weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination

was made; but nothing in this subsection 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 interest 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, from the date on which the acquiring authority have served notice to treat in respect of any right, they have power exercisable in the like circumstances and subject to the like conditions, to enter for the purposes 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 (protection of acquiring authority’s possession where by inadvertence an estate, right or interest has not been got in) 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 24

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on deposited plan entitled "Land Plan"</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken in connection with the authorised works</i>
1.9774 Hectares Rohm & Haas Site, Tyne Street Jarrow	109	The provision of a construction compound and works area
7.1542 Hectares land and buildings adjacent to the River Tyne including the former Mercantile Dock	208	The provision of a construction compound and works area and/or for the temporary storage of dredged arisings and/or aggregates from the River Tyne or elsewhere

SCHEDULE 8

Article 40

PART I

PROTECTION OF THE ENVIRONMENT AGENCY

[TO BE AGREED]

PART II

PROTECTION OF THE PORT OF TYNE AUTHORITY

2. The provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and the Port of Tyne Authority ("the Port Authority"), have effect for the protection of the Port Authority and the users of the river.
3. The undertaker shall at all reasonable times during construction of the authorised works and thereafter allow the Port Authority, their servants and agents, access to those works and all reasonable facilities for inspecting any tidal work.
4. After the purpose of any temporary works has been accomplished or after a reasonable period of notice in writing from the Port Authority requiring it so to do, the undertaker shall with all reasonable dispatch, remove any such temporary works or any materials relating thereto which may have been placed below the level of high water by or on behalf of the undertaker and, on its failing so to do within a reasonable period after receiving such notice, the Port Authority may remove the same and charge the undertaker with the reasonable expense of so doing, which expense the undertaker shall repay to the Port Authority.
5. If, during the construction of a tidal work or within 10 years after the completion of such work and as a consequence whether in whole or in part of its construction, there is caused or created an accumulation or erosion, the undertaker, if so requested by the Port Authority before or within the period of 10 years after such completion or exercise, shall remedy such accumulation or erosion in the manner specified in paragraph (7) below and, if it refuses or fails so to do, the Port Authority may themselves cause the work to be done and may recover the reasonable cost thereof from the undertaker.
6. Should any accumulation or erosion in consequence of such construction arise within the period of 10 years mentioned in paragraph (5) above and be remedied in accordance with paragraph (7) below, any recurrence of such accumulation or erosion shall from time to time be so remedied by the undertaker during that period of 10 years and at any time thereafter, save that the undertaker's obligation under this paragraph shall cease in the event that following the remedying of any accumulation or erosion a period of 10 years elapses from the completion of that remedying, without any further accumulation or erosion being caused or created in consequence of such construction or exercise.
7. For the purpose of paragraphs (5) and (6) above -

- (a) in the case of an accumulation, the remedy shall be its removal; and
 - (b) in the case of erosion, the remedy shall be the carrying out of such reconstruction works and other protective works or measures as may be necessary.
8. In the event that surveys, inspections, tests and sampling carried out pursuant to paragraph (11)(b) below establish that any accumulation or erosion mentioned in paragraphs (5) or (6) above would have been caused in any event by factors other than the construction of a tidal work, the undertaker shall be liable to remedy such accumulation or erosion only to the extent that the same is attributable to such construction as aforesaid.
9. For the purposes of paragraph (5) above the date of completion of a work shall be the date on which it is brought into use.
10. The undertaker shall -
- (a) pay to the Port Authority the reasonable costs incurred by the Port Authority of such alterations to the marking and lighting of the navigational channel of the river as may be necessary during or in consequence of the construction of a tidal work;
 - (b) provide and maintain on any tidal works such fog signalling apparatus as may be reasonably required by the Port Authority and shall properly operate such apparatus during periods of restricted visibility for the purpose of warning vessels of the existence of the relevant works; and
 - (c) afford to the Port Authority such facilities as they may reasonably require for the placing and maintenance on any tidal works of signals, tide-boards, tide-gauges or other apparatus for the safety or benefit of navigating.
11. Without prejudice to the other provisions of this article, the undertaker shall be responsible for, and make good to the Port Authority, all losses, costs, charges, damages and expenses however caused (including a reasonable and proper proportion of the overhead charges of the Port Authority) which may reasonably be incurred or occasioned to the Port Authority by reason of or arising from or in connection with -
- (a) the inspection of any of the tidal works by the Port Authority or their duly authorised representative;
 - (b) the carrying out of surveys, inspections, tests and sampling within and of the river (including the bed and banks of the river) –
 - (i) to establish the marine conditions prevailing prior to the construction of any of the tidal works in such area of the river as the Port Authority have reasonable cause to believe may subsequently be affected by any siltation, scouring or other alteration which the undertaker is liable to remedy under this article; and
 - (ii) where the Port Authority have reasonable cause to believe that the construction of any of the tidal works is causing or has caused any siltation, scouring or other alteration as aforesaid;
 - (c) the construction of any of the tidal works or the failure of any of the tidal works or the undertaking by the Port Authority of works or measures to prevent or remedy

danger or impediment to navigation or damage to any property arising from such construction, exercise or failure; and

(d) any act or omission of the undertaker or its servants or agents whilst engaged in the construction or operation of any of the tidal works.

12. Without prejudice to the generality of paragraph (11) above, the undertaker shall indemnify the Port Authority from and against all claims and demands arising out of, or in connection with, such construction, exercise, failure or act or omission as is mentioned in that paragraph.
13. Nothing in this article shall impose any liability on the undertaker to the extent that any losses, costs, charges, damages, expenses, claims or demands referred to in paragraphs (11) and (12) above are attributable to negligence on the part of the Port Authority or of any person in their employ or of their contractors or agents.
14. The Port Authority shall give to the undertaker notice of any claim or demand in relation to which the undertaker may be liable under this article and no settlement or compromise of any such claim or demand shall be made without the consent in writing of the undertaker.
15. The fact that any work or thing has been executed or done with the consent of the Port Authority and in accordance with any conditions or restrictions prescribed by the Port Authority or in accordance with plans approved or deemed to be approved by the Port Authority or to their satisfaction or in accordance with any directions or award of an arbitrator or in accordance with any plans approved by the Secretary of State and any conditions or restrictions imposed by him shall not relieve the undertaker from any liability under the provisions of this Part of this Schedule.
16. With the exception of any duty owed by the Port Authority to the undertaker which is expressly provided for in the foregoing provisions of this article, nothing in this Order shall be construed as imposing upon the Port Authority either directly or indirectly, any duty or liability to which the Port Authority would not otherwise be subject and which is enforceable by proceedings before any court.
17. Save as the terms of this Order may otherwise provide nothing in this Order shall affect prejudicially any statutory or other rights, powers or privileges vested in, or enjoyed by, the Port Authority or the harbour master at the date of making of this Order but so that it shall not be necessary for the undertaker to obtain any other consent from the Port Authority unless this part of this Schedule so provides.
18. In this paragraph -

"accumulation" means any accumulation of silt or other material which constitutes an impediment to navigation;

"construction" includes execution and placing, maintenance, extension, enlargement and relaying, and "constructed" shall be construed accordingly;

"erosion" means any erosion of the bed or banks of the river or other structure of whatever nature;

"plans" includes arrangements, sections, descriptions, drawings and specifications;

"the river" means the river Tyne.

"tidal work" means so much of any temporary or permanent work authorised by this Order (which includes the demolition of any structure, any removal of gravel or other material, any dredging or similar work, any geotechnical investigations that may be undertaken and safeguarding works as is in, on, under or over:

- (a) the surface of land below the level of high water spring tides forming part of the river; or
- (b) any land owned, occupied or used by the Port Authority for operational purposes.

PART III

PROTECTION OF BRITISH TELECOMMUNICATIONS PLC

19. (1) The provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and British Telecommunications PLC, have effect for the protection of BT.

(2) In this Part of this Schedule:-

"BT" means British Telecommunications PLC;

"installation" shall include construction and "construct" shall be construed accordingly; and

"telecommunications operator" means the operator of a telecommunications code system, and "operator", "telecommunications apparatus", "telecommunications code system" and "telecommunications system" have the same meanings as in Schedule 4 to the Telecommunications Act 1984²⁶.

20. The temporary stopping up or diversion of any street under article 8 above shall not affect any right of a telecommunications operator under paragraph 9 of the Telecommunications Code, contained in Schedule 2 to the Telecommunications Act 1984, in respect of any apparatus which at the time of the temporary stopping up or diversion is in that street.

21. If BT suffers damage in consequence of the construction, use or failure of the authorised works or any subsidence resulting from the works, the undertaker shall pay the cost reasonably incurred by BT in making good such damage, and shall indemnify BT against claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by BT 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 BT, its officers, servants, contractors or other agents; and

²⁶ 1984 c. 12.

(b) BT shall give to the undertaker reasonable notice of any claim, demand or proceedings and shall make no settlement or compromise thereof without the consent of the undertaker, such consent not to be unreasonably withheld.

22. Nothing in this Order shall affect any right of a telecommunications operator under Schedule 2 to the Telecommunications Act 1984.

SCHEDULE 9

Article 41

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 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 extinguishments 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) above, references to the appropriate Minister are references to the Secretary of State.

(3) Where any apparatus of public utility undertakers or of a public telecommunications operator 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) above, 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 him, 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) above 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 recently incurred by him, in consequence of the removal, for the purpose of making his drain or sewer communicate with any other public sewer or with a private sewage disposal plant.

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

(6) In this paragraph -

"the 1990 Act" means the Town and County Planning Act 1990²⁷.

"public telecommunications operator" means –

²⁷ 1990 c. 8.

- (a) a person authorised, by a licence to which section 9 of the Telecommunications Act 1984²⁸ applies, to run a public telecommunications system, or
- (b) a person to whom the telecommunications code has been applied pursuant to section 10 of that Act; and

"public utility undertakers" has the same meaning as in the Highways Act 1980²⁹.

Apparatus of statutory undertakers etc. in stopped up streets

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

- (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 such position as aforesaid.

(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 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 relocation works.

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

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions,
- (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

²⁸ 1984 c.12.
²⁹ 1980 c.66.

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) above shall be reduced by the amount of that excess.

(5) For the purposes of sub-paragraph (4) above –

(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 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) above (and having regard, where relevant, to sub-paragraph (4) above) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7½ years 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) above shall not apply where the authorised works constitute substantial works required for the purposes of the undertaker's undertaking and are executed in property held or used for the purposes of the undertaking, but instead –

(a) the allowable costs of the relocation works shall be determined in accordance with section 85 of the Act (sharing of costs 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 III of the 1991 Act;

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

"statutory utility" means a statutory undertaker for the purposes of the Highways Act 1980 or a public telecommunications operator as defined in paragraph 1(6) above.

Railway and navigation undertakings

3. - (1) Subject to the following provisions of this paragraph, the powers under article 6 (power to execute street works) of this Order 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 Highways Act 1980) –

(a) is under the control or management of, or is maintainable by, railway or tramway undertakers or a navigation authority, or

(b) forms part of a level crossing belonging to any such undertakers or to such an authority or to any other person,

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

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

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

(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 43

APPLICATION OF LOCAL LEGISLATION

1. So far as not repealed section 3 of the Tyne Improvement Act 1908³⁰ shall not apply to works carried out under the powers of this Order.
2. So far as not repealed section 24 of the Tyne Improvement Act 1929³¹ shall not apply to works carried out under the powers of this Orders so that it shall not be necessary for the undertaker to obtain any such approval as is required pursuant to that section.
3. Subsections 53(4), (6), (7), (8), (9), (10), (12) and (13) of the Tyne Tunnel Act 1946³² shall not apply to works carried out under the powers of this Order.
4. Sections 42 to 48 of and Schedule 2 to the Tyne and Wear Act 1976³³ shall not apply to works carried out under the powers of this Order.
5. Articles 5 to 7 of the Port of Tyne Harbour Revision Order 2001³⁴ shall not apply in respect of activities carried out under the powers of this Order.

30 1908 c. lxxxv.

31 1929 c. xlix.

³² 1946 c. xl.

33 1976 c. xxxvi.

³⁴ S.I. 2001/416

SCHEDULE 11

Article 44

ENACTMENTS REPEALED AND CEASING TO HAVE EFFECT

<i>Chapter</i>	<i>Short Title</i>	<i>Extent of repeal</i>
1946 c. xl.	Tyne Tunnel Act	Sections 46, 48
1976 c.xxxvi.	Tyne & Wear Act	Sections 12, 13, 14, 19, 21, 22, 24, 25 and 27