

**202[ ] No. 0000**

**INFRASTRUCTURE PLANNING**

**The London Resort Development Consent Order 202[ ]**

*Made* - - - - 202[ ]  
*Laid before Parliament* \*\*\*  
*Coming into force* - - 202[ ]

**CONTENTS**

**PART 1  
PRELIMINARY**

1. Citation and commencement
2. Interpretation

**PART 2  
PRINCIPAL POWERS**

3. Development consent granted by the Order
4. Maintenance of authorised development
5. Parameters of authorised development
6. Benefit of Order
7. Transfer of benefit of Order
8. Application of the 1990 Act
9. Planning permission

**PART 3  
STREETS**

10. Street works
11. Application of the 1991 Act
12. Power to alter layout, etc., of streets
13. Permanent stopping up of streets, rights of way and rights of access
14. Temporary closure, alteration, diversion and restriction of use of streets and rights of access
15. Access to and from works
16. Agreements with street authorities
17. Traffic regulation

PART 4  
SUPPLEMENTAL POWERS

18. Discharge of water
19. Protective work to buildings
20. Authority to survey and investigate land

PART 5  
POWERS OF ACQUISITION

21. Compulsory acquisition of land
22. Power to override easements and other rights
23. Time limit for exercise of authority to acquire land compulsorily
24. Compulsory acquisition of rights and imposition of restrictive covenants
25. Private rights over land
26. Application of the 1981 Act
27. Modification of the 2017 Regulations
28. Modification of Part 1 of the 1965 Act
29. Acquisition of subsoil or air-space only
30. Rights under or over streets
31. Temporary use of land for carrying out the authorised development
32. Temporary use of land for maintaining the authorised development
33. Statutory undertakers
34. Apparatus and rights of statutory undertakers in stopped up streets
35. Recovery of costs of new connection

PART 6  
MISCELLANEOUS AND GENERAL

36. Protective provisions
37. Crown rights
38. Deemed marine licence
39. Temporary closure of, and works in, the river Thames
40. Temporary closure of, and works in, the river Ebbsfleet
41. Felling or lopping trees
42. Trees subject to tree preservation orders
43. Application of landlord and tenant law
44. Defence to proceedings in respect of statutory nuisance
45. Certification of plans, etc.
46. Service of notices
47. Arbitration
48. Procedure in relation to approvals, etc., under Schedule 2
49. Disapplication and modification of legislative provisions
50. Amendment of local legislation
51. Byelaws
52. Fixed penalty notices relating to byelaws
53. Confirmation of byelaws
54. No double recovery
55. Guarantees in respect of payment of compensation

- 56. Disregard of certain improvements, etc.
- 57. Set-off for enhancement in value of retained land
- 58. Development consent obligation

---

## SCHEDULES

- SCHEDULE 1 — AUTHORISED DEVELOPMENT
  - PART 1 — NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECT
  - PART 2 — ASSOCIATED DEVELOPMENT
- SCHEDULE 2 — REQUIREMENTS
  - PART 1 — REQUIREMENTS
  - PART 2 — PROCEDURE FOR DISCHARGE OF REQUIREMENTS
- SCHEDULE 3 — STREETS SUBJECT TO STREET WORKS
- SCHEDULE 4 — STREETS SUBJECT TO PERMANENT ALTERATION OF LAYOUT
- SCHEDULE 5 — PERMANENT STOPPING UP OF STREETS, PUBLIC RIGHTS OF WAY AND PRIVATE MEANS OF ACCESS
  - PART 1 — STREETS TO BE STOPPED UP AND FOR WHICH A SUBSTITUTE IS TO BE PROVIDED
  - PART 2 — STREETS TO BE STOPPED UP AND FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED
  - PART 3 — PUBLIC RIGHTS OF WAY TO BE STOPPED UP AND FOR WHICH A SUBSTITUTE IS TO BE PROVIDED
  - PART 4 — PUBLIC RIGHTS OF WAY TO BE STOPPED UP AND FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED
  - PART 5 — PRIVATE MEANS OF ACCESS TO BE STOPPED UP AND FOR WHICH A SUBSTITUTE IS TO BE PROVIDED
  - PART 6 — PRIVATE MEANS OF ACCESS TO BE STOPPED UP AND FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED
  - PART 7 — PUBLIC RIGHTS OF WAY TO BE CREATED
  - PART 8 — PRIVATE MEANS OF ACCESS TO BE CREATED
- SCHEDULE 6 — STREETS OR RIGHTS OF ACCESS TO BE TEMPORARILY CLOSED, ALTERED, DIVERTED OR RESTRICTED FOR WHICH A DIVERSION IS TO BE PROVIDED
- SCHEDULE 7 — LAND IN WHICH NEW RIGHTS MAY BE ACQUIRED
- SCHEDULE 8 — RESTRICTION OF POWER OF COMPULSORY ACQUISITION OF LAND UNDER THE SURFACE AND AIRSPACE OVER THE LAND
- SCHEDULE 9 — MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS AND RESTRICTIVE COVENANTS
- SCHEDULE 10 — LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN
- SCHEDULE 11 — PROTECTIVE PROVISIONS
  - PART 1 — FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS
  - PART 2 — FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

- PART 3 — FOR THE PROTECTION OF DRAINAGE AUTHORITIES
- PART 4 — FOR THE PROTECTION OF RAILWAY INTERESTS
- PART 5 — FOR THE PROTECTION OF NATIONAL GRID  
ELECTRICITY TRANSMISSION PLC AS ELECTRICITY  
UNDERTAKER
- PART 6 — FOR THE PROTECTION OF SOUTHERN GAS NETWORKS  
PLC AS GAS UNDERTAKER
- PART 7 — FOR THE PROTECTION OF NATIONAL HIGHWAYS  
LIMITED
- SCHEDULE 12 — DEEMED MARINE LICENCE
  - PART 1 — INTRODUCTORY
  - PART 2 — LICENSED MARINE ACTIVITIES
  - PART 3 — ENFORCEMENT
  - PART 4 — CONDITIONS
  - PART 5 — PROCEDURE FOR THE DISCHARGE OF CONDITIONS
- SCHEDULE 13 — TREES SUBJECT TO TREE PRESERVATION ORDERS
- SCHEDULE 14 — LONDON RESORT BYELAWS
  - PART 1 — PRELIMINARY
  - PART 2 — RESTRICTIONS
  - PART 3 — ENFORCEMENT
- SCHEDULE 15 — TRAFFIC REGULATION
  - PART 1 — CLEARWAYS
  - PART 2 — PROHIBITED MOVEMENTS
- SCHEDULE 16 — DOCUMENTS TO BE CERTIFIED

[An application has been made to the Secretary of State, in accordance with the Infrastructure Planning (Applications and Prescribed Forms and Procedure) Regulations 2009(a), for an Order under sections 37, 114, 115, 120 and 122 of the Planning Act 2008(b) (“the Act”).]

[The application was examined in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010(c) by a panel appointed by the Secretary of State pursuant to Chapter 4 of Part 6 of the 2008 Act.]

[The panel, having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83 of the 2008 Act, has submitted a report to the Secretary of State.]

[The Secretary of State, having considered the representations made and not withdrawn, and the report of the panel, has decided to make an Order granting development consent for the development described in the application [with modifications which in the opinion of the Secretary of State do not make any substantial change to the proposals comprised in the application]].

[Accordingly, the Secretary of State makes the following Order in exercise of the powers conferred by sections 114, 115, 120 and 122 of, and paragraphs 1 to 3, 8, 10 to 17, 24, 26, 33, 36 and 37 of Part 1 of Schedule 5 to, the 2008 Act—]

---

(a) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2014/469, S.I. 2014/2381, S.I. 2015/377, S.I. 2015/1682, S.I. 2017/524 and S.I. 2017/572.  
 (b) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20).  
 (c) S.I. 2010/103, amended by S.I. 2012/635.

# PART 1

## PRELIMINARY

### Citation and commencement

1. This Order may be cited as the London Resort Development Consent Order 202[ ] and comes into force on [ ] 202[ ].

### Interpretation

- 2.—(1) In this Order, unless the context requires otherwise,—
- “the 1961 Act” means the Land Compensation Act 1961(a);
  - “the 1965 Act” means the Compulsory Purchase Act 1965(b);
  - “the 1968 Act” means the Port of London Act 1968(c);
  - “the 1980 Act” means the Highways Act 1980(d);
  - “the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(e);
  - “the 1984 Act” means the Road Traffic Regulation Act 1984(f);
  - “the 1988 Act” means the Road Traffic Act 1988(g);
  - “the 1990 Act” means the Town and Country Planning Act 1990(h);
  - “the 1991 Act” means the New Roads and Street Works Act 1991(i);
  - “the 2008 Act” means the Planning Act 2008(j);
  - “the 2009 Act” means the Marine and Coastal Access Act 2009(k);
  - “the 2017 Regulations” means the Compulsory Purchase of Land (Vesting Declarations) (England) Regulations 2017(l);
  - “access, rights of way and public rights of navigation plans” means the plans listed in Schedule 154 (documents to be certified) and certified as the access, rights of way and public rights of navigation plans by the Secretary of State for the purposes of this Order;
  - “address” includes any number or address used for the purposes of electronic transmission;
  - “apparatus” for the purposes of article 10 (street works) has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act;
  - “authorised development” means the development and associated development described in Schedule 1 (authorised development) and any other development authorised by this Order, which is development within the meaning of section 32 (meaning of development) of the 2008 Act;
  - “book of reference” means the document listed in Schedule 15 (documents to be certified) certified by the Secretary of State as the book of reference for the purposes of this Order;
  - “building” includes any structure or erection or any part of a building, structure or erection but does not include any highway or part of the highway;
  - “carriageway” has the same meaning as in the 1980 Act;

- 
- (a) 1961 c. 33.
  - (b) 1965 c. 56.
  - (c) 1968 c. xxxii.
  - (d) 1980 c. 66.
  - (e) 1981 c. 66.
  - (f) 1984 c. 27.
  - (g) 1988 c. 52.
  - (h) 1990 c. 8.
  - (i) 1991 c. 22.
  - (j) 2008 c. 29.
  - (k) 2009 c. 23.
  - (l) S.I. 2017/3

“commence” means beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised development other than pre-commencement works, and “commencement” is to be construed accordingly;

“crown land plans” means the plans listed in Schedule 15 (documents to be certified) and certified as the crown land plans by the Secretary of State for the purposes of this Order;

“the deemed marine licence” means the licence set out in Schedule 11 (deemed marine licence) and deemed by article 38 (deemed marine licence) to have been granted under Part 4 (marine licensing) of the 2009 Act, by virtue of section 149A (deemed consent under a marine licence) of the 2008 Act;

“design and access statement” means the document listed in Schedule 15 (documents to be certified) and certified by the Secretary of State as the design and access statement for the purposes of this Order;

“design code” means the code listed in Schedule 15 (documents to be certified) and certified as the design code by the Secretary of State for the purposes of this Order;

“draft contaminated land management strategy” means the draft contaminated land management strategy listed in Schedule 15 (documents to be certified) and certified by the Secretary of State as the draft contaminated land management strategy for the purposes of this Order;

“draft construction traffic management plan” means the draft construction traffic management plan listed in Schedule 15 (documents to be certified) and certified by the Secretary of State as the draft construction traffic management plan for the purposes of this Order;

“draft employment and skills strategy” means the draft employment and skills strategy listed in Schedule 15 (documents to be certified) and certified by the Secretary of State as the draft employment and skills strategy for the purposes of this Order;

“draft energy strategy” means the draft energy strategy listed in Schedule 15 (documents to be certified) and certified by the Secretary of State as the draft energy strategy for the purposes of this Order;

“draft historic environmental framework and mitigation strategy” means the draft historic environmental framework and mitigation strategy listed in Schedule 15 (documents to be certified) and certified by the Secretary of State as the draft historic environmental framework and mitigation strategy for the purposes of this Order;

“draft navigational risk assessment” means the draft navigational risk assessment listed in Schedule 15 (documents to be certified) and certified by the Secretary of State as the draft navigational risk assessment for the purposes of this Order;

“Ebbsfleet Development Corporation” means the urban development corporation established by the Ebbsfleet Development Corporation (Area and Constitution) Order 2015(a) or any successor to its planning functions;

“electronic transmission” means a communication transmitted—

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

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

“the environmental statement” means the document listed in Schedule 15 (documents to be certified) and certified by the Secretary of State as the environmental statement for the purposes of this Order;

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

“highways plans” means the plans listed in Schedule 15 (documents to be certified) and certified by the Secretary of State as the highways plans for the purposes of this Order;

“highways works” means any works to be undertaken in the highway;

“land” includes any interest or right in, to or over land;

“land plans” means the plans listed in Schedule 15 (documents to be certified) and certified by the Secretary of State as the land plans for the purposes of this Order;

---

(a) S.I. 2015/747.

“limits of deviation” means the limits of deviation referred to in article 5 (parameters of authorised development) and shown as such on the works plans;

“maintain” includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part, but not replace the whole of the authorised development, but only insofar as such activities do not give rise to any new significant adverse environmental effects than those identified in the environmental statement and “maintenance” and “maintaining” are to be construed accordingly;

“MMO” means the Marine Management Organisation;

“National Highways” means National Highways Limited (company number 09346363), whose registered office is at Bridge House, Walnut Tree Close, Guildford, GU1 4ZZ, appointed as highway authority for the highways specified in article 2 of the Appointment of a Strategic Highways Company Order 2015(a) or any successor in function;

“Order land” means the land shown on the land plans which is land to be acquired or used permanently or temporarily and described in the book of reference;

“the Order limits” means the limits shown on the works plans within which the authorised development may be carried out;

“outline biosecurity plan” means the outline biosecurity plan listed in Schedule 15 (documents to be certified) and certified by the Secretary of State as the outline biosecurity plan for the purposes of this Order;

“outline CEMP” means the document listed in Schedule 15 (documents to be certified) certified by the Secretary of State as the outline construction environmental management plan;

“outline construction waste management plan” means the outline construction waste management plan listed in Schedule 15 (documents to be certified) and certified by the Secretary of State as the outline construction waste management plan for the purposes of this Order;

“outline landscape management plan” means the outline landscape management plan listed in Schedule 15 (documents to be certified) and certified by the Secretary of State as the outline landscape management plan for the purposes of this Order;

“outline operational waste management strategy” means the outline operational waste management strategy listed in Schedule 15 (documents to be certified) and certified by the Secretary of State as the outline operational waste management strategy for the purposes of this Order;

“owner”, in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(a);

“parameters of authorised development” means the parameters of the authorised development referred to in article 5 (parameters of authorised development) and shown as such on the parameter plans;

“parameter plans” means the plans listed in Schedule 15 (documents to be certified) and certified as the parameter plans by the Secretary of State for the purposes of this Order;

“PLA” means the Port of London Authority;

“pre-commencement works” means operations consisting of archaeological investigations and pre-construction ecological mitigation, environmental surveys and monitoring, investigations for the purpose of assessing and monitoring ground conditions and levels, erection of any temporary means of enclosure, receipt and erection of construction plant and equipment diversion and laying of underground apparatus, site clearance for construction compounds, the installation of site compounds and the temporary display of site notices or information;

“the relevant highway authority” means Kent County Council or Thurrock Council as the case may be;

---

(a) 1981 c. 67. The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34). There are other amendments to section 7 which are not relevant to this Order.

“the relevant planning authority” means the local planning authority for the area in which land to which the provisions of this Order apply is situated (which in the urban development area means Ebbsfleet Development Corporation) and—

- (a) in respect of the requirements, means the local planning authority in whose area the part of the authorised development to which the requirement relates is located (which in the urban development area means Ebbsfleet Development Corporation); and
- (b) in respect of enforcement under Part 8 of the 2008 Act means the local planning authority in whose area the land to which the enforcement relates is located (which, for the purposes of section 173(2) of the 2008 Act, in the urban development area means Ebbsfleet Development Corporation);

“replace” includes to demolish, clear, remove existing rides, buildings and facilities and the construction of new rides, buildings and facilities for tourism and leisure use providing such works do not give rise to any new significant adverse environmental effects to those identified in the Environmental Statement;

“Requirements” means the Requirements set out in Schedule 2 (requirements), and references to numbered Requirements are references to the corresponding paragraph number in Schedule 2;

“the sections” means the cross section drawings and the longitudinal section drawings of certain works;

“statutory undertaker” means any person falling within section 127(8) of the 2008 Act and includes a public communications provider defined by section 151(1) of the Communications Act 2003(a);

“street” means a street within the meaning of section 48 (streets, street works and undertakers) of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

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

“traffic regulation plans” means the plans listed in Schedule 15 (documents to be certified) and certified as the traffic regulation plans by the Secretary of State for the purposes of this Order;

“trees and hedgerows which may be removed or may be affected plans” means the plans listed in Schedule 15 (documents to be certified) and certified as the trees and hedgerows which may be removed or may be affected plans by the Secretary of State for the purposes of this Order;

“the tribunal” means the Lands Chamber of the Upper Tribunal;

“the undertaker” means London Resort Company Holdings Limited, company number 7625574, registered at 20 Berkeley Square, London W1J 6EQ or any other person who has the benefit of this Order under article 6 (benefit of Order);

“urban development area” means the urban development area designated by article 2(1) of the Ebbsfleet Development Corporation (Area and Constitution) Order 2015;

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

“works plans” means the plans listed in Schedule 15 (documents to be certified) and certified as the works plans by the Secretary of State 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, on or under land or in the airspace above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or over which rights are created and acquired under this Order or is otherwise comprised in this Order.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are taken to be measured along that work.

---

(a) 2003 c. 21. There are amendments to section 151 which are not relevant to this Order.



- (4) All areas described in square metres in the book of reference are approximate.
- (5) References in this Order to numbered works are references to the works numbered in Schedule 1.
- (6) References to “Schedule” are, unless otherwise stated, reference to Schedules to this Order.
- (7) The expression “includes” is to be construed without limitation.
- (8) References to any statutory body include any body’s successor in respect of functions which are relevant to this Order.
- (9) References in this Order to “part of the authorised development” are to be construed as references to a stage, phase or element of the authorised development.
- (10) References in this Order to the creation and acquisition of rights over land includes references to rights to oblige a party having an interest in land to grant those rights referenced in the Order, at the direction of the undertaker, either—
- (a) to an affected person directly, where that person’s land or rights over land have been adversely affected by this Order, and, where that is the case, the rights referenced in the Order are to be granted for the benefit of the land in which that affected person has an interest at the time of the making of this Order; or
  - (b) to any statutory undertaker for the purpose of their undertaking.

## PART 2

### PRINCIPAL POWERS

#### **Development consent granted by the Order**

**3.**—(1) Subject to the provisions of this Order, including the requirements in Schedule 2 (requirements), the undertaker is granted development consent for the authorised development to be carried out and operated within the Order limits.

(2) Any enactment applying to land within or adjacent to the Order limits has effect subject to the provisions of this Order.

(3) Subject to the provisions of this Order, including the requirements in Schedule 2, the undertaker may at any time replace any part of the authorised development comprised in Works Nos. 1(a) and 2(a).

(4) Subject to article 5 (parameters of authorised development) the works numbered in Schedule 1 (authorised development) must be constructed in the lines and situations shown on the works plans and to the levels shown on the sections.

#### **Maintenance of authorised development**

**4.** The undertaker may at any time maintain the authorised development, except to the extent that this Order or an agreement made under this Order, provides otherwise.

#### **Parameters of authorised development**

**5.**—(1) The authorised development is to be carried out within the parameters shown and described in the table below and shown on the works plans, the highways plans and the parameter plans and in carrying out the authorised development the undertaker may—

- (a) deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans;
- (b) deviate vertically from the levels shown on the parameter plans—
  - (i) to any extent upwards within the limits of deviation shown on the parameter plans; or
  - (ii) to any extent downwards as may be necessary, convenient or expedient;

- (c) in respect of the highway works deviate vertically from the levels shown on the highways plans to any extent not exceeding 1.5 metres upwards or downwards; and
- (d) in respect of any boundary between the areas of two numbered works deviate laterally by 20 metres either side of the boundary as shown on the works plans,

except that these maximum limits of deviation do not apply where it is demonstrated by the undertaker to the Secretary of State's satisfaction and the Secretary of State, following consultation by the undertaker with the relevant planning authority, certifies accordingly that a deviation in excess of these limits would not give rise to any new significant adverse environmental effects in comparison with those reported in the environmental statement.

---

<i>(1) Scheduled Work</i>	<i>(2) Lateral Deviation Limited</i>	<i>(3) Upwards Vertical Deviation Limited</i>	<i>(4) Downwards Vertical Deviation Limited</i>
---------------------------	--------------------------------------	---	---

---

(2) Part 2 (procedure for discharge of requirements) of Schedule 2 (requirements) applies to an application to the Secretary of State for certification under paragraph (1) as though it were an approval required by a requirement under that Schedule.

**Benefit of Order**

6.—(1) Subject to paragraph (2) and article 7 (transfer of benefit of Order), the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to the works for which consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

**Transfer of benefit of Order**

7.—(1) Subject to paragraphs (4) and (5), the undertaker may—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.

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

(4) The consent of the Secretary of State is required for the exercise of the powers of paragraph (1) except where—

- (a) the transferee or lessee is the holder of a licence under section 6 of the Electricity Act 1989(a); or

---

(a) 1989 c. 29.

- (b) the time limits for all claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
  - (i) no such claims have been made;
  - (ii) any such claims that have been made have all been compromised or withdrawn;
  - (iii) compensation has been paid in final settlement of all such claims has taken place;
  - (iv) payment of compensation into court in lieu of settlement of all such claims has taken place; or
  - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of all claims that no compensation is payable.

(5) Not less than 21 days before the date of transfer or grant of any or all of the benefit of the Order the undertaker must notify the relevant planning authorities of—

- (a) the identity of the transferee or lessee;
- (b) the provisions of the Order the benefit of which is to be transferred or granted.

### **Application of the 1990 Act**

**8.**—(1) This article applies where the Order land is used for temporary construction works.

(2) Where this article applies, section 57(2) (planning permission required for development) of the 1990 Act applies as if the development consent granted by this Order were planning permission granted for a limited period.

### **Planning permission**

**9.**—(1) It does not constitute a breach of the terms of this Order, if, following the coming into force of this Order, any development, or any part of a development, is carried out or used within the Order limits in accordance with any planning permission granted under the 1990 Act (including a planning permission granted under article 3 (permitted development) and Class B (development at amusement parks) of Part 18 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015**(a)**).

(2) To the extent that it applies, nothing in this Order is to prejudice the operation of, and the powers and duties of the undertaker under the Town and Country Planning (General Permitted Development) (England) Order 2015.

(3) Development consent granted by this Order for the construction, operation and maintenance of the authorised development is treated as planning permission pursuant to Part 3 (control over development) of the 1990 Act for the purposes of regulation 14 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012**(b)**, regulation 6(1)(e) of the Hedgerows Regulations 1997**(c)** and section 9(4)(d) of the Forestry Act 1967**(d)**.

(4) As from the date on which the authorised development is commenced any works licence granted under the 1968 Act or any conditions of a planning permission granted under section 57 (requirement of planning permission) of the 1990 Act which relate to land within the Order limits or land adjacent to the Order limits cease to have effect to the extent they are inconsistent with the authorised development or with anything done or approved under the requirements in Schedule 2 (requirements).

---

(a) S.I. 2015/596.  
 (b) S.I. 2012/605.  
 (c) S.I. 1997/1160.  
 (d) 1967 c. 10.

## PART 3

### STREETS

#### Street works

**10.**—(1) The undertaker may, for the purposes of the carrying out or maintaining of the authorised development, enter on so much of any of the streets specified in Schedule 3 (streets subject to street works) as are within the Order limits and may—

- (a) break up or open the street, or any cellar, sewer, drain, culvert or tunnel under it;
- (b) drill, tunnel or bore under the street;
- (c) place and keep apparatus in the street;
- (d) maintain apparatus in the street or change its position;
- (e) construct and maintain the bridges and tunnels constructed as part of the authorised development; and
- (f) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (e).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works of undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) Where the undertaker is not the street authority, sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

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

#### Application of the 1991 Act

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

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of that Act (which defines what highway authority works are major highway works); or
- (b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64 (dual carriageways and roundabouts) of the 1980 Act or section 184 (vehicle crossings over footways and verges) of that Act.

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

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

- (a) section 56(a) (power to give directions as to timing);
- (b) section 56A(b) (power to give directions as to placing of apparatus);
- (c) section 58(c) (restrictions on works following substantial road works);
- (d) section 73A(d) (power to require undertaker to re-surface street);
- (e) section 73B(e) (power to specify timing etc. of re-surfacing);

---

(a) Section 56 was amended by section 43 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).  
(b) Section 56A was inserted by section 44 of the Traffic Management Act 2004.  
(c) Section 58 was amended by section 51 of, and Schedule 1 to, the Traffic Management Act 2004.  
(d) Section 73A was inserted by section 55 of the Traffic Management Act 2004.  
(e) Section 73B was inserted by section 55 of the Traffic Management Act 2004.

- (f) section 73C(a) (materials, workmanship and standard of re-surfacing);
- (g) section 78A(b) (contributions to costs of re-surfacing by undertaker); and
- (h) Schedule 3A(c) (restrictions on works following substantial street works).

(4) The provisions of the 1991 Act(d) mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the carrying out of street works) and any regulations made, or code of practice issued or approved, under those provisions apply (with the necessary modifications) in relation to any closure, alteration, diversion or restriction of use of a street of a temporary nature by the undertaker under the powers conferred by article 14 (temporary closure, alteration, diversion and restriction of use of streets and rights of access) and the carrying out of street works under article 10 (street works) whether or not the closure, alteration, diversion or restriction constitutes street works within the meaning of that Act.

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

- (a) section 54(e) (advance notice of certain works), subject to paragraph (4);
- (b) section 55(f) (notice of starting date of works), subject to paragraph (4);
- (c) section 57(g) (notice of emergency works);
- (d) section 59(h) (general duty of street authority to co-ordinate works);
- (e) section 60 (general duty of undertakers to co-operate);
- (f) section 68 (facilities to be afforded to street authority);
- (g) section 69 (works likely to affect other apparatus in the street);
- (h) section 71 (materials, workmanship and standard of reinstatement);
- (i) section 75 (inspection fees);
- (j) section 76 (liability for cost of temporary traffic regulation); and
- (k) section 77 (liability for cost of use of alternative route),

and all such other provisions as apply for the purposes of the provisions mentioned in paragraph (4).

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) have effect as if references in section 57 of that Act to emergency works were a reference to a closure, alteration, diversion or restriction (as the case may be) required in a case of emergency.

(7) Subject to paragraphs (3), (8) and (9), permit schemes will apply to the construction and maintenance of the authorised development and will be used by the undertaker in connection with the exercise of any powers conferred by this Part.

(8) For the purposes of this Order a permit under a permit scheme may not be granted subject to conditions where compliance with those conditions would constitute a breach of this Order or where the undertaker would be unable to comply with those conditions pursuant to the powers conferred by this Order.

(9) Without restricting the undertaker's recourse to any alternative appeal mechanism which may be available under a permit scheme or under article 46 (arbitration) or otherwise, the undertaker may appeal any decision to refuse to grant a permit or to grant a permit subject to conditions to the Secretary of State

### **Power to alter layout, etc., of streets**

**12.—**(1) Subject to Schedule 11 (*Protective Provisions*), the undertaker may for the purposes of constructing the authorised development permanently alter the layout of or carry out any works in

---

(a) Section 73C was inserted by section 55 of the Traffic Management Act 2004.  
 (b) Section 78A was inserted by section 57 of the Traffic Management Act 2004.  
 (c) Schedule 3A was inserted by section 52(2) of, Schedule 4 to, the Traffic Management Act 2004.  
 (d) Sections 54, 55, 57, 60, 68 and 69 were amended by sections 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004.  
 (e) As also amended by section 49(1) of the Traffic Management Act 2004.  
 (f) As also amended by section 49(2) and 51(9) of the Traffic Management Act 2004.  
 (g) As also amended by section 52(3) of the Traffic Management Act 2004.  
 (h) As amended by section 42 of the Traffic Management Act 2004.

any street specified in column (1) of Schedule 4 (streets subject to permanent alteration of layout) in the manner specified in relation to that street in column (2).

(2) Without limitation on the specific powers conferred by paragraph (1), but subject to paragraph (4), the undertaker may, for the purposes of constructing, operating and maintaining the authorised development, permanently or temporarily alter the layout of any street within the Order limits and the layout of any street having a junction with such a street; and, without limiting the scope of this paragraph, the undertaker may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track, verge or land between two carriageways within the street;
- (b) alter the level or increase the width of any such kerb, footpath, footway, cycle track or verge;
- (c) reduce the width of the carriageway of the street;
- (d) make and maintain vehicle crossovers and passing places;
- (e) carry out works for the provision or alteration of parking places, loading bays and cycle tracks; and
- (f) execute any works to provide or improve sight lines required by the highway authority.

(3) Before reinstating any street which has been temporarily altered under this article, the undertaker must restore the street to the reasonable satisfaction of the street authority.

(4) The powers conferred by paragraph (2) must not be exercised without the consent of the street authority, following consultation with the relevant planning authority, which may attach reasonable conditions to any consent.

(5) Save for any application made to National Highways, if a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

### **Permanent stopping up of streets, rights of way and rights of access**

**13.**—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets, public rights of way and private means of access specified in columns (1), (2) and (3) of the tables in Parts 1 to 6 of Schedule 5 (permanent stopping up of streets, public rights of way and private means of access) to the extent specified in that table and create the public rights of way and private means of access specified in the tables in Parts 7 and 8 of Schedule 5.

(2) No street or public right of way specified in Parts 1, 3 or 5 of Schedule 5 is to be wholly or partly stopped up under this article unless—

- (a) either—
  - (i) the new street or public right of way to be substituted for it, which is specified in column (4) of the table in Schedule 5, has been completed and is open for use; or
  - (ii) a temporary alternative route for the street or public right of way to be stopped up is first provided and subsequently maintained by the undertaker.

(3) Where a street or a public right of way has been stopped up under paragraph (1)—

- (a) all rights of way over or along the street or public rights of way are extinguished; and
- (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the street as is bounded on both sides by land owned by the undertaker.

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

## **Temporary closure, alteration, diversion and restriction of use of streets and rights of access**

**14.**—(1) During and for the purposes of carrying out the authorised development, the undertaker may temporarily close, alter, divert or restrict the use of any street or right of access shown on the access, rights of way and public rights of navigation plans or within the Order limits and may for any reasonable time—

- (a) divert the traffic from the street or right of access; and
- (b) subject to paragraph (3), prevent all persons from passing along the street or right of access.

(2) Without limitation on the scope of paragraph (1), the undertaker may use as a temporary working site any street or right of access which has been temporarily closed, altered, diverted or restricted under the powers conferred by this article.

(3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street or right of access affected by the temporary closure, alteration, diversion or restriction under this article if there would otherwise be no such access.

(4) Without limitation on the scope of paragraph (1), the undertaker may temporarily close, alter, divert or restrict the use of the streets or rights of access specified in columns (1) and (2) of Schedule 6 (streets or rights of access to be temporarily closed, altered, diverted or restricted for which a diversion is to be provided) to the extent specified, by reference to the letters and numbers shown on the access, rights of way and public rights of navigation plans, in column (3) of that Schedule, and, if it does so in respect of a street or right of access specified in that Schedule, must provide the temporary diversion as specified in column (4) of that Schedule.

(5) The undertaker must not temporarily close, alter, divert or restrict the use of—

- (a) any street or right of access specified as mentioned in paragraph (4) without first consulting the street authority; and
- (b) any other street or right of access without the consent of the street authority, following consultation with the relevant planning authority, which may attach reasonable conditions to any consent.

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

(7) Save for any application made to National Highways, if a street authority which receives an application for consent under paragraph (5)(b) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

## **Access to and from works**

**15.**—(1) The undertaker may, for the purposes of the authorised development and with the consent of the relevant street authority (such consent not to be unreasonably withheld or delayed but which may be granted subject to reasonable conditions), after consultation with the relevant planning authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(2) Save for any application made to National Highways, if a relevant street authority which receives an application for consent under paragraph (1) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

## **Agreements with street authorities**

**16.**—(1) A relevant street authority and the undertaker may enter into an agreement 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 authorised development;

- (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
  - (c) the construction and maintenance of the structure of any bridge or tunnel carrying a street over or under a railway, street or any part of the authorised development;
  - (d) any stopping up, prohibition, restriction, alteration or diversion of a street as part of or to facilitate the authorised development;
  - (e) the carrying out in the street of any of the works referred to in article 10 (street works);
  - (f) the adoption by a street authority which is the highway authority of works—
    - (i) undertaken on a street which is existing publicly maintainable highway; or
    - (ii) which the undertaker and highway authority agree are to be adopted as publicly maintainable highway; or
  - (g) any such works as the parties may agree.
- (2) Such an agreement may, without limitation on the scope of paragraph (1)—
- (a) make provision for the relevant highway authority to carry out any function under this Order which relates to the street in question;
  - (b) include an agreement between the undertaker and the relevant highway authority specifying a reasonable time for the completion of the works; and
  - (c) contain such terms as to payment and otherwise as the parties consider appropriate.
- (3) This article does not apply to streets within the main site which are intended to be private streets.

### **Traffic regulation**

- 17.**—(1) Subject to the provisions of this article, the undertaker may, for the purposes of the authorised development—
- (a) make provision, in respect of those roads specified in column (2) of Part 1 of Schedule 14 (traffic regulation), as to the status of such roads specified in column (3) of that Part of that Schedule upon the occurrence of the event specified in column (4) of that Part of that Schedule; and
  - (b) make provision in respect of those roads specified in column (2) of Part 2 of Schedule 14, as to the prohibited movements as specified in column (3) of that Part of that Schedule.
- (2) Without limiting the scope of the specific powers conferred by paragraph (1) but subject to the provisions of this article and the consent of the relevant traffic authority following consultation with the relevant planning authority, such consent not to be unreasonably withheld but which may be subject to reasonable conditions, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with the construction of the authorised development—
- (a) revoke amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
  - (b) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road;
  - (c) suspend or authorise the use as a parking place of any road;
  - (d) make provision as to the direction or priority of vehicular traffic on any road; and
  - (e) permit or prohibit vehicular access to any road, either at all times or at times, on days or during such periods as may be specified by the undertaker.
- (3) The undertaker must not exercise the powers in paragraphs (1)(b) or (2) unless it has—
- (a) given not less than 4 weeks' notice in writing of its intention so to do to the chief officer of police and to the relevant traffic authority; and
  - (b) advertised its intention in such manner as the relevant traffic authority may specify in writing within 7 days of the relevant traffic authority's receipt of notice of the undertaker's intention under sub-paragraph (a).



(4) Any prohibition, restriction or other provision made by the undertaker under paragraph (2) is to—

- (a) have effect as if duly made by, as the case may be—
  - (i) the relevant traffic authority as a traffic regulation order under the 1984 Act; or
  - (ii) the local authority in whose area the road is situated as an order under section 32(b) (power of local authorities to provide parking places) of the 1984 Act; and
- (b) be deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004(a).

(5) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraph (2) at any time.

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

(7) Save for any application made to National Highways, if the relevant traffic authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (2) that is accompanied by all relevant information the relevant traffic authority is deemed to have given consent.

## PART 4

### SUPPLEMENTAL POWERS

#### **Discharge of water**

**18.—**(1) Subject to sub-paragraphs (3) and (4) the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance or use of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) is to be determined in accordance with the arbitration provisions in article 46 (arbitration).

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

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

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works under this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

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

(7) Subject to article 48 (disapplication and modification of legislative provisions) nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(b).

---

(a) 2004 c. 18.

(b) S.I. 2016/1154.

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

(9) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority, Homes England, a joint planning board, an urban development corporation or a harbour authority within the meaning of the Harbours Act 1964(a);
- (b) “main river” has the same meaning as in the Water Resources Act 1991(b); and
- (c) other expressions, excluding watercourse, used both in this article and in the Environmental Permitting (England and Wales) Regulations 2016 have the same meaning as in those regulations.

### **Protective work to buildings**

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

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised development is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage and place on, leave on and remove from the land and building any apparatus and equipment for use in connection with the survey.

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

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

and if it is reasonably required, the undertaker may take possession, or exclusive possession, of the building and any land or part thereof for the purpose of carrying out the protective works.

(5) Before exercising—

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

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

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or

---

(a) 1964 c. 40.  
(b) 1991 c. 57.

expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 46 (arbitration).

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

(8) Where—

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

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

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152(1) (compensation where no right to claim in nuisance) of the 2008 Act.

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

(11) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (compulsory acquisition provisions) of the 2008 Act.

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

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development.
- (c) any works the purpose of which is to secure the safe operation of the authorised development or to prevent or minimise the risk to such operation being disrupted.

### **Authority to survey and investigate land**

**20.**—(1) The undertaker may for the purposes of the construction, operation or maintenance of the authorised development enter on—

- (a) any land shown within the Order limits; and
- (b) where reasonably necessary, any land which is adjacent to, but outside the Order limits in order to carry out monitoring or surveys in respect of the authorised development and—
  - (i) survey or investigate the land;
  - (ii) without limitation on the scope of sub-paragraph (a), make any excavations, trial holes, bore holes and other investigations on the land in such positions as the undertaker thinks fit to investigate the extent or nature of the surface layer ground water, underground structures, foundations, plant, apparatus and subsoil, and remove soil and water samples and discharge water from sampling operations on to the land;
  - (iii) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land, including making any excavations or trial holes on the land for such purposes; and
  - (iv) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes and bore holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1), unless at least 14 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) must, if so required, before or after entering the land produce written evidence of authority to do so; and
  - (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes or bore holes.
- (4) No trial holes or bore holes are to be made under this article—
- (a) on land located within the highway boundary without the consent of the highway authority; or
  - (b) in a private street without the consent of the street authority,
- but such consent must not be unreasonably withheld or delayed.
- (5) No trial holes are to be made under this article within the river Thames without the consent of the PLA, but such consent must not be unreasonably withheld or delayed.
- (6) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.
- (7) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

## PART 5

### POWERS OF ACQUISITION

#### **Compulsory acquisition of land**

**21.**—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development, or to facilitate it, or as is incidental to it, and may use any land so acquired for the purposes authorised by this Order or for any other purposes in connection with or ancillary to the authorised development.

(2) This article is subject to article 23 (time limit for exercise of authority to acquire land compulsorily), article 24 (compulsory acquisition of rights and imposition of restrictive covenants), article 29 (acquisition of subsoil or air-space only), and article 31 (temporary use of land for carrying out the authorised development).

#### **Power to override easements and other rights**

**22.**—(1) The carrying out or use of development authorised by this Order (whether the activity is undertaken by the undertaker or by any person deriving title from the undertaker or by any contractors, servants or agents of the undertaker) and the doing of anything else authorised by this Order is authorised for the purpose specified in section 158(2) (nuisance: statutory authority) of the 2008 Act, notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to the use of land arising by virtue of contract.

(2) Subject to article 53 (no double recovery), where any interest, right or restriction to which this article applies is interfered with or breached under paragraph (1), unless otherwise agreed, compensation—

- (a) is payable under section 7 (measure of compensation in case of severance) or 10 (further provision as to compensation for injurious affection) of the 1965 Act; and
- (b) is to be assessed in the same way and subject to the same rules as in the case of other compensation under those sections where—

- (i) the compensation is to be estimated in connection with a purchase under that Act; or
- (ii) the injury arises from the execution of works on or use of land acquired under that Act.

(3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and any restrictions as to the use of land arising by virtue of a contract.

(4) Where a person deriving title under the undertaker by whom the land in question was acquired—

- (a) is liable to pay compensation by virtue of paragraph (3); and
- (b) fails to discharge that liability,

the liability is enforceable against the undertaker.

(5) Nothing in this article is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1)

(6) Subsection (2) of section 10 of the 1965 Act applies to paragraph (2) by virtue of section 152(5) (compensation in case where no right to claim in nuisance) of the 2008 Act.

(7) Any rule or principle applied to the construction of section 10 of the 1965 Act applies to the construction of paragraph (2) with any necessary modifications.

(8) Nothing in this article is to be construed as authorising any act or omission on the part of any person in contravention of a planning obligation or development consent obligation as defined in section 106(1) and 106(1A) of the 1990 Act given in connection with the Order any part of the authorised development.

#### **Time limit for exercise of authority to acquire land compulsorily**

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

- (a) no notice to treat is to be served in respect of the Order land under Part 1 of the 1965 Act; and
- (b) no declaration is to be executed in respect of the Order land under section 4 (execution of declaration) of the Compulsory Purchase (Vesting Declarations) Act 1981( ) as applied by article 26 (application of the 1981 Act).

(2) The authority conferred by article 31 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

#### **Compulsory acquisition of rights and imposition of restrictive covenants**

**24.**—(1) Subject to the provisions of this article, the undertaker may acquire such rights over the Order land, or impose restrictive covenants affecting the Order land, including rights and restrictive covenants for the benefit of a statutory undertaker or any other person, as may be required for any purpose for which that land may be acquired under article 21 (compulsory acquisition of land) by creating them as well as by acquiring rights and the benefits of restrictions already in existence.

(2) Subject to section 8 (other provisions as to divided land) of the 1965 Act, as modified by Schedule 8 (modification of compensation and compulsory purchase enactments for creation of new rights and restrictive covenants), where the undertaker acquires a right over land or imposes a restriction under paragraph (1) the undertaker is not required to acquire a greater interest in that land.

(3) Schedule 8 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation and acquisition of a new right or the imposition of a restriction.

(4) In any case where the acquisition of rights or the imposition of a restriction under paragraph (1) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights or impose such restrictions to the statutory undertaker in question.

(5) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (4) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

(6) The power conferred by paragraph (1) to acquire the rights and to impose the restrictive covenants for the benefit of statutory undertakers or for the benefit of any other person—

- (a) does not preclude the acquisition of such other rights and the imposition of such other restrictive covenants in respect of the same land as may be required for the benefit of any other statutory undertaker or any other person; and
- (b) must not be exercised by the undertaker in a way that precludes the acquisition of such other rights and the imposition of such other restrictive covenants in respect of the same as are required for the benefit of any other statutory undertaker or any other person.

### **Private rights over land**

**25.—**(1) Subject to the provisions of this article, all private rights and restrictive covenants over land subject to compulsory acquisition under this Order are extinguished—

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

whichever is the earliest.

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

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

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights and restrictive covenants over Order land owned by the undertaker are extinguished on commencement of any activity authorised by this Order which interferes with or breaches such rights.

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

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation in accordance with the terms of section 152 of the 2008 Act to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 33 (statutory undertakers) applies.

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

- (a) any notice given by the undertaker before—
  - (i) the completion of the acquisition of the land or the acquisition of rights or the imposition of restrictive covenants over or affecting the land;

- (ii) the undertaker's appropriation of it;
  - (iii) the undertaker's entry onto it; or
  - (iv) the undertaker's taking temporary possession of it,
- that any or all of those paragraphs do not apply to any right specified in the notice; and
- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.
- (8) If any such agreement as is referred to in paragraph (7)(b)—
- (a) is made with a person in or to whom the right is vested or belongs; and
  - (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) References in this article to private rights over land include any right of way, trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect but does not include any planning obligation or development consent obligation as defined in section 106(1) and 106(1A) of the 1990 Act given in connection with the Order or any part of the authorised development.

(10) Where a nationally significant infrastructure project is proposed to be constructed by a person other than the undertaker on, over or under the Order land—

- (a) sections 127(2) to (6) (statutory undertakers' land) apply to land (as defined by section 235(1) of the 2008 Act) acquired by the undertaker, whether compulsorily or by agreement, for the purposes of the authorised development as if—
  - (i) the reference to statutory undertakers in section 127(8) of the 2008 Act included the undertaker; and
  - (ii) the use of the land or holding of an interest in the land for the purposes of the authorised development amounted to the carrying on of a statutory undertaking for the purposes of section 127(1)(c) of the 2008 Act; and
- (b) section 138(4) (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act applies as if—
  - (i) the rights acquired by the undertaker under this Order (whether compulsorily or by agreement) were a relevant right for the purposes of sections 138(1) and (2) of the 2008 Act;
  - (ii) the works authorised to be constructed by this Order were relevant apparatus for the purposes of sections 138(1) and (3) of the 2008 Act; and
  - (iii) the reference to statutory undertakers in section 138(4A) of the 2008 Act included the undertaker,

but not in either case for any other purpose whatsoever.

### **Application of the 1981 Act**

**26.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

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

(3) In section 1 (application of Act), in subsection (1), omit the words “in themselves”.

(4) In section 1 (application of Act) for subsection (2) substitute—

“(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”.

(5) In section 4 (execution of declaration), for subsection (1) substitute—

“(1) The acquiring authority may execute in respect of any of the land which they are authorised to acquire by the compulsory purchase order a declaration in the prescribed form vesting the land in themselves, or in the case of land or a right that they are authorised to acquire for the benefit of a third party in the third party in question, from the end of such period as may be specified in the declaration (not being less than 3 months from the date on which the service of notices required by section 6 is completed).”.

(6) In section 5(2)(a) (earliest date for execution of declaration) omit the words from “, and this subsection” to the end.

(7) Omit section 5A(b) (time limit for general vesting declaration).

(8) In section 5B(1)(c) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 23 (time limit for exercise of authority to acquire land compulsorily) of the London Resort Development Consent Order 202[ ]”.

(9) In section 6(d) (notices after execution of declaration) in subsection (1)(b) for “section 15 of, or paragraph 6 of Schedule 1 to the Acquisition of Land Act 1981” substitute “section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.

(10) In section 7(e) (constructive notice to treat) in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(11) In section 8 (vesting, and right to enter and take possession), after subsection (3), insert—

“(4) In this section references to the acquiring authority include any third party referred to in section 4(1).”.

(12) In section 10 (acquiring authority’s liability arising on vesting of the land), in subsection (1), after “vested in an acquiring authority” insert “or a third party”.

(13) In section 11 (recovery of compensation overpaid), for subsection (1) substitute—

“(1) This section applies where after the execution of a general vesting declaration a person (“the claimant”) claims compensation in respect of the acquisition of an interest in land by virtue of the declaration, and the acquiring authority pay compensation in respect of that interest.”.

(14) In Schedule A1(f) (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—

“(2) But see article 29 (acquisition of subsoil or air-space only) of the London Resort Development Consent Order 202[ ] which excludes the acquisition of subsoil only from this Schedule.”.

(15) References to the 1965 Act in the 1981 Act must be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act and as modified by article 28 (modification of Part 1 of the 1965 Act).

## Modification of the 2017 Regulations

27.—(1) Schedule 1 to the 2017 Regulations is modified as follows.

(2) In paragraph (3) of Form 1, after “from the date on which the service of notices required by section 6 of the Act is completed”, insert—

“(1A) The [*insert land or rights or both*] described in Part [*insert number*] of the Schedule hereto as being for the benefit of third parties and more particularly delineated on the plan

---

(a) Section 5 was amended by Schedule 15 to the Housing and Planning Act 2016 (c. 22).

(b) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016.

(c) Section 5B(1) was inserted by section 202(2) of the Housing and Planning Act 2016.

(d) Section 6 was amended by paragraph 7 of Schedule 15 to the Housing and Planning Act 2016 and section 4 of, and paragraph 52(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11).

(e) Section 7(1) was substituted by Schedule 18 to the Housing and Planning Act 2016 (c. 22).

(f) Schedule A1 was inserted by paragraph 6 of Part 1 of Schedule 18 to the Housing and Planning Act 2016.



annexed hereto vests in the third parties in question as from the end of the period of [*insert period of 3 months or longer*] from the date on which the service of notices required by section 6 of the Act is completed.”.

(3) References in Form 2 to “in themselves” is substituted with “in themselves and any identified third parties”.

(4) In paragraph (b) of the notes on use of Form 2—

- (a) after “Insert the name of the authority” insert “and where the context requires insert a reference to third parties”; and
- (b) omit “Thereafter rely on that definition wherever “b” appears in the text.”.

### **Modification of Part 1 of the 1965 Act**

**28.**—(1) Part 1 of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act is modified as follows.

(2) In section 4A(1) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 23 (time limit for exercise of authority to acquire land compulsorily) of the London Resort Development Consent Order 202[ ]”.

(3) In section 11A (powers of entry: further notices of entry)—

- (a) in subsection (1)(a) after “land” insert “under that provision”; and
- (b) in subsection (2) after “land” insert “under that provision”.

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 23 (time limit for exercise of authority to acquire land compulsorily) of the London Resort Development Consent Order 202[ ]”.

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

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

“(2) But see article 29 (acquisition of subsoil or air-space only) of the London Resort Development Consent Order 202[ ], which excludes the acquisition of subsoil only from this Schedule.”;

(b) after paragraph 29 insert—

## **“PART 4**

### **INTERPRETATION**

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under article 19 (protective work to buildings), 31 (temporary use of land for carrying out the authorised development) or 32 (temporary use of land for maintaining the authorised development) of the London Resort Development Consent Order 202[ ]”.

### **Acquisition of subsoil or air-space only**

**29.**—(1) Subject to paragraph (4), the undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or the air-space over the land referred to in article 21 (compulsory acquisition of land) and article 24 (compulsory acquisition of rights and imposition of restrictive covenants) as may be required for any purpose for which that land may be acquired or for which rights over or under the land may be acquired under those provisions instead of acquiring the whole of the land.

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

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

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) section 153(4A) (reference of objection to Upper Tribunal: general) of the 1990 Act.

(4) Paragraphs (2) and (3) do not apply where the undertaker acquires a cellar, vault, arch, or other construction forming part of a house, building or manufactory.

(5) Schedule [ ] contains provision which in certain cases restricts the power under article 21—

- (a) to the subsoil [or under-surface] of land,
- (b) [to the subsoil or under-surface of the land and rights of passage, or
- (c) to the airspace over the land.

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

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

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) 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) Paragraph (2) does not apply in relation to—

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

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

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

### **Temporary use of land for carrying out the authorised development**

**31.**—(1) Subject to the following provisions of this article, the undertaker may, in connection with the carrying out of the authorised development—

(a) enter on and take temporary possession of—

- (i) the land specified in column (1) of Schedule 9 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that Schedule relating to the part of the authorised development specified in column (3) of that Schedule; and
- (ii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act and no declaration has been made under section 4 of the 1981 Act (other than a notice of entry or a declaration in connection with the acquisition of rights or the imposition of restrictive covenants only);

- (b) remove any buildings, apparatus, landscaping and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land;
- (d) construct any works on that land as are mentioned in Schedule 1 (authorised development); and
- (e) construct any permanent mitigation works.

(2) Not less than 3 months before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker is not required to serve notice under paragraph (2) where the undertaker has identified a potential risk to the safety of any of—

- (a) the authorised development or any of its parts;
- (b) the public; or
- (c) the surrounding environment,

and in such circumstances, the undertaker may enter the land under paragraph (1) subject to giving such period of notice as is reasonable practical in the circumstances.

(4) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 9; or
- (b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 (execution of declaration) of the 1981 Act in relation to that land.

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

- (a) replace a building removed under this article;
- (b) restore the land on which any permanent works have been constructed under paragraph (1)(d) or (1)(e);
- (c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development;
- (d) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development; or
- (e) remove or reposition any apparatus belonging to statutory undertakers or necessary mitigation works.

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

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

(8) Any dispute as to the satisfactory removal of temporary works and restoration of land under paragraph (5) does not prevent the undertaker from giving up possession of the land.

(9) Subject to article 53 (no double recovery) nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(10) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not precluded from—

- (a) acquiring new rights or imposing restrictive covenants over any part of the land listed in Schedule 7 under article 24 (compulsory acquisition of rights and imposition of restrictive covenants); or
- (b) acquiring any part of the subsoil of or air-space over (or rights in the subsoil of or air-space over) the land shown on the land plans as subject to the permanent acquisition of subsoil or air-space under article 29 (acquisition of subsoil or air-space only).

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

(12) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(13) Where the undertaker has taken temporary possession of any part of the river Thames under paragraph (1), the public right of navigation over that part of the river Thames is suspended and unenforceable against the PLA.

(14) Nothing in this article prevents the undertaker from taking temporary possession more than once in relation to any land specified in column (1) of Schedule 9.

### **Temporary use of land for maintaining the authorised development**

**32.**—(1) Subject to the following provisions of this article, at any time during the maintenance period relating to any of the authorised development, the undertaker may—

- (a) enter upon and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development;
- (b) enter on any land within the Order land for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and
- (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the 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 must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker is not required to serve notice under paragraph (3) where the undertaker has identified a potential risk to the safety of any of—

- (a) the authorised development or any of its parts;
- (b) the public; or
- (c) the surrounding environment.

(5) The undertaker may remain in possession of land under this article only for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

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

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

(8) Any dispute as to a person's entitlement to compensation under paragraph (7), or as to the amount of the compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(9) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 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 (7).

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

(11) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act.

(12) In this article "the maintenance period", in relation to any part of the authorised development means the period of 5 years beginning with the date on which that part of the authorised development is first opened for use.

### **Statutory undertakers**

**33.**—(1) Subject to Schedule 10 (protective provisions), article 24 (compulsory acquisition of rights and imposition of restrictive covenants) and paragraph (2), the undertaker may—

- (a) acquire compulsorily, or acquire existing or new rights or impose restrictive covenants over any Order land belonging to statutory undertakers; and
- (b) extinguish or suspend the rights of or restrictions for the benefit of, and remove or reposition the apparatus belonging to, statutory undertakers on, under or within the Order land.

(2) Paragraph (1)(b) has no effect in relation to apparatus in respect of which article 34 (apparatus and rights of statutory undertakers in stopped up streets) of this Order applies.

### **Apparatus and rights of statutory undertakers in stopped up streets**

**34.**—(1) Where a street is stopped up under article 13 (permanent stopping up of streets, public rights of way and rights of access), any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is closed, altered, diverted or restricted under article 14 (temporary closure, alteration, diversion and restriction of use of streets and rights of access) any statutory utility whose apparatus is under, in, on over, along or across the street may, and if reasonably requested to do so by the undertaker must—

- (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 described in sub-paragraph (a).

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

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

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

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

- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was;

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) is to be reduced by the amount of that excess.

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

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

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the 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) Paragraphs (3) to (6) do not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 (street works in England and Wales) of the 1991 Act, but instead—

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

(8) In this article—

“relocation works” means work executed, or apparatus provided, under paragraph (2); and

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in this section 151(1) (interpretation) of the Communications Act 2003(a).

### **Recovery of costs of new connection**

**35.**—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 33 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 33, any person who is—

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

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer

---

(a) 2003 c. 21. There are amendments to section 151 which are not relevant to this Order.

belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 34 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this article—

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

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

## PART 6

### MISCELLANEOUS AND GENERAL

#### **Protective provisions**

**36.** Schedule 10 (protective provisions) has effect.

#### **Crown rights**

**37.**—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular, nothing in this Order authorises the undertaker or any licensee to take, use, enter on or in any manner interfere with any land or rights of any description (including any part of the shore or bed of the sea or any river, channel, creek, bay or estuary) belonging to—

- (a) Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners; or
- (b) Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or
- (c) a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.

(3) Consent under paragraph (1) may be given unconditionally or subject to terms and conditions, and is deemed to have been given in writing where it is sent electronically.

#### **Deemed marine licence**

**38.** The undertaker is deemed to have been granted the licence to carry out the works and make the deposits described in Schedule 11 (deemed marine licence) to this Order, subject to the licence conditions which are deemed to have been attached to the licence by the Secretary of State under Part 4 of the 2009 Act.

#### **Temporary closure of, and works in, the river Thames**

**39.**—(1) Subject to the provisions in this article, the undertaker may, in connection with the construction of the authorised development temporarily interfere with the relevant part of the river.

(2) Without limitation on the powers conferred by paragraph (1) but subject to paragraphs (3) and (4) the undertaker may, in connection with the construction, maintenance and operation of the authorised development—

- (a) temporarily moor or anchor barges or other vessels or craft in the relevant part of the river and may load or unload into and from such barges, other vessels or craft equipment,

machinery, soil and any other materials in connection with the construction of the authorised development;

- (b) temporarily alter, interfere with, occupy and use the banks, bed, foreshores, waters and walls of the relevant part of the river;
- (c) construct, place, maintain and remove temporary works and structures within the banks, bed, foreshores, waters and walls of the relevant part of the river;
- (d) interfere with the navigation of the relevant part of the river; and
- (e) on grounds of health and safety only, temporarily close to navigation the relevant part of the river.

(3) During the period of any closure referred to in paragraph (2)(e), all rights of navigation and other rights relating to, and any obligations of the PLA to manage the relevant part of the river so closed must be suspended and unenforceable against the PLA.

(4) The power conferred by paragraphs (1) and (2) must be exercised in such a way which secures—

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

(5) Any person who suffers loss as a result of the suspension of any private right of navigation under this article is entitled to be paid compensation for such loss by the undertaker, to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) The PLA must not carry out any activities or grant a works licence over the land shown on the access, rights of way and public rights of navigation plans without the consent of the undertaker, such consent not to be unreasonably withheld or delayed.

(7) In this article, “the relevant part of the river” means so much of the river Thames as is shown hatched on the access, rights of way and public rights of navigation plans.

### **Temporary closure of, and works in, the river Ebbsfleet**

**40.**—(1) Subject to the provisions in this article, the undertaker may, in connection with the construction of the authorised development temporarily interfere with the relevant part of the river.

(2) Without limitation on the powers conferred by paragraph (1) but subject to paragraphs (3) and (4) the undertaker may, in connection with the construction, maintenance and operation of the authorised development—

- (a) temporarily alter, interfere with, occupy and use the banks, bed, foreshores, waters and walls of the relevant part of the river;
- (b) construct, place, maintain and remove temporary works and structures within the banks, bed, foreshores, waters and walls of the relevant part of the river;
- (c) interfere with the navigation of the relevant part of the river; and
- (d) .

(3) During the period of any closure referred to in paragraph (2)(e), all rights of navigation and other rights relating to, and any obligations of [ ] to manage the relevant part of the river so closed must be suspended and unenforceable against [ ].

(4) The power conferred by paragraphs (1) and (2) must be exercised in such a way which secures—

- (a) that no more of the relevant part of the river is closed to navigation at any time than is necessary in the circumstances; and



(5) In this article, “the relevant part of the river” means so much of the river Ebbsfleet as is shown hatched on the access, rights of way and public rights of navigation plans.

### **Felling or lopping trees**

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

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development;
- (b) from constituting a danger to persons using the authorised development; or
- (c) from obstructing or interfering with the passage of construction vehicles to the extent necessary for the purposes of construction of the authorised development.

(2) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act. The provisions of this article do not apply without the agreement of the relevant planning authority to any tree identified to be retained in the landscaping scheme approved under requirement [ ] (provision of landscaping).

(3) The provisions of this article do not apply without the agreement of the relevant highway authority to any tree within a highway.

### **Trees subject to tree preservation orders**

**42.**—(1) The undertaker may fell or lop any tree described in Schedule 12 (trees subject to tree preservation orders) and identified on the trees and hedgerows which may be removed or may be affected plans, or cut back its roots, if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub—

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

(2) Paragraph (1) extends to any other tree within the Order limits subject to a preservation order which was made before this Order comes into force.

(3) In carrying out any activity authorised by paragraph (1)—

- (a) the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any damage arising from such activity; and
- (b) the duty contained in section 206(1) (replacement of trees) of the 1990 Act does not apply.

(4) The authority given by paragraph (1) constitutes a deemed consent under the relevant tree preservation order.

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

**43.**—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

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

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

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

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

### **Defence to proceedings in respect of statutory nuisance**

**44.**—(1) Where proceedings are brought under section 82(1) (summary proceeding by persons aggrieved by statutory nuisances) of the Environmental Protection Act 1990(a) in relation to a nuisance falling within paragraphs (c), (d), (e), (fb), (g), (ga) or (h) of section 79(1) (statutory nuisances and inspections therefor) of that Act no order is to be made, and no fine may be imposed, under section 82(2)(b) of that Act if—

- (a) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) of the Control of Pollution Act 1974(c); or
  - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) For the purposes of paragraph (1), compliance with the controls and measures described in the Construction Environmental Management Plan approved under Schedule 2 (requirements) to this Order will be sufficient, but not necessary, to show that an alleged nuisance could not reasonably be avoided.

(3) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

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

**45.**—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of all documents and plans listed in the table in Schedule 15 (documents to be certified) for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified is to be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

---

(a) 1990 c. 43. There are amendments to subsection 82(1) which are not relevant to this Order.

(b) Subsection (2) was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c. 40); there are other amendments to this subsection but none are relevant to this Order.

(c) 1974 c. 40. Sections 61(9) was amended by section 162 of, and paragraph 15(1) and (3) of Schedule 3 to, the Environmental Protection Act 1990 (c. 43). There are other amendments to this subsection which are not relevant to this Order.

## 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—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (5) to (8) by electronic transmission.

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

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

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

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

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

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

---

(a) 1978 c. 30.

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

### **Arbitration**

**47.** Subject to article 47 (procedure in relation to approvals, etc., under Schedule 2) and except where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, any difference under any provision of this Order must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

### **Procedure in relation to approvals, etc., under Schedule 2**

**48.—(1)** Where an application or request is submitted to the relevant planning authority, a highway authority, a street authority or the owner of a watercourse, sewer or drain for any consent, agreement or approval required or contemplated by any of the provisions of the Order such consent, agreement or approval, if given, must be given in writing, such agreement not to be unreasonably withheld.

(2) Part 2 of Schedule 2 (procedure for discharge of requirements) has effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to the requirements set out in Part 1 of Schedule 2, and any document referred to in any requirement in that Part 1.

### **Disapplication and modification of legislative provisions**

**49.—(1)** The following provisions do not apply in relation to the construction of any work or the carrying out of any operation required for the purposes of, or in connection with, the construction of the authorised development and within any maintenance period defined in article 32(12), any maintenance of the authorised development—

- (a) the provisions of the Towns Improvement Clauses Act 1847(a);
- (b) sections 21, 22, 60, 66 to 75, 92, 121 and 124 of the 1968 Act;
- (c) section 28E (duties in relation to site of special scientific interest) of the Wildlife and Countryside Act 1981(b);
- (d) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 to the Water Resources Act 1991(c);
- (e) sections 23 (prohibition of obstructions, etc. in watercourses), 30 (authorisation of drainage works in connection with a ditch) and 32 (variation of awards) of the Land Drainage Act 1991;
- (f) the provisions of any byelaws made under section 66 (power to make byelaws) of the Land Drainage Act 1991(d); and
- (g) regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(e) in respect of a flood risk activity and a waste operation only.

(2) Following the expiry of any maintenance period defined in article 32(12), the requirement under section 70 (works not to be constructed, etc., without works licence) of the 1968 Act to obtain a works licence under section 66 (licensing of works) of that Act does not apply to anything done within any structure forming part of the authorised development in connection with the operation or maintenance of the authorised development or any other function of the undertaker.

---

(a) 1847 c. 34.  
(b) 1981 c. 69.  
(c) 1991 c. 57.  
(d) 1991 c. 59.  
(e) S.I. 2016/1154.

(3) The provisions of the Neighbourhood Planning Act 2017(a), insofar as they relate to temporary possession of land under this Order, do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction of the authorised development and, within the maintenance period defined in article 32(12), any maintenance of any part of the authorised development.

(4) Development consent granted by this Order is to be treated as a—

- (a) safety certificate granted under the Safety of Sports Grounds Act 1975(b); and
- (b) a licence under section 37 of the Children and Young Persons Act 1963(c).

(5) The authorised development is to be treated as an approved premises for the solemnization of marriages in pursuance of section 26(1)(bb) of the Marriages Act 1949(d).

(6) Regulations 3 and 4 of the Marriages and Civil Partnerships (Approved Premises) Regulations 2005(e) do not apply in respect of the authorised development and regulation 7(1) is amended so that the approval lasts in perpetuity.

(7) The provisions of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007(f) do not apply in respect of the authorised development in relation to the areas required for Work Nos [ ]/[ ] areas as shown on the Parameter Plans.

### **Amendment of local legislation**

**50.**—(1) The following local enactments and local byelaws or other provisions made under any of those enactments or byelaws, are hereby excluded and do not apply insofar as inconsistent with a provision, of or a power conferred by, this Order—

- (a) An Act for repairing, widening, and maintaining the Road leading from Dartford to and through Northfleet and Gravesend, and thence to the Stones End, near the Parish Church of Strood, in the County of Kent 1822(g);
- (b) An Act for improving the Dartford and Crayford Creeks in the County of Kent, and for making a Diversion in the Line of the said Dartford Creek, and other Works connected therewith 1840(h);
- (c) South Eastern and London Chatham and Dover Railways Act 1901(i);
- (d) Essex County Council Act 1933(j);
- (e) Gravesend and Milton Waterworks Act 1936(k);
- (f) British Transport Commission Order Confirmation Act 1953(l);
- (g) Dartford Prevention of Nuisance Byelaws 1977;
- (h) Nuisances from Snow Filth Dust Ashes and Rubbish and for Preventing Keeping of Animals so as to be Prejudicial to Health in the Borough of Dartford Byelaws 1979;
- (i) County of Kent Act 1981(m);
- (j) Thames Water Authority Land Drainage Byelaws 1981;
- (k) Dogs Fouling Footways and Verges and User of Motorcycles and Other Vehicles Byelaws 1988;
- (l) Port of London Thames Byelaws 2012; and

---

(a) 2017 c. 20.

(b) 1975 c. 52.

(c) 1963 c. 37.

(d) 1949 c. 76.

(e) S.I. 2005/3168.

(f) S.I. 2007/783.

(g) 1822 c. lxx.

(h) 1840 c. lv.

(i) 1901 c. ccxxxvii.

(j) 1933 c. xlvi.

(k) 1936 c. l.

(l) 1953 c. xx.

(m) 1981 c. xviii.

(m) The Port of Tilbury (Expansion) Order 2019<sup>(a)</sup>.

(2) For the purpose of paragraph (1) a provision is inconsistent with the exercise of a power conferred by this Order if and insofar as (in particular)—

- (a) it would make it an offence to take action, or not to take action, in pursuance of a power conferred by this Order;
- (b) action taken in pursuance of a power conferred by this Order would cause the provision to apply so as to enable a person to require the taking of remedial or other action or so as to enable remedial or other action to be taken;
- (c) action taken in pursuance of a power or duty under the provisions would or might interfere with the exercise of any work authorised by this Order.

## Byelaws

**51.**—(1) The undertaker may from time to time make byelaws for the efficient management and good rule and government of the areas shown as Works Nos. 3a, 3b, 4, 9a, 9b, 11, 12, 13, 14a, 14b, 14c, 14d, 15, 16, 17a, 17b, 18a, 18b, 19a, 19b, 19c, 22, 23, 24a, 24b, 24c and 25 development and for the prevention and suppression of nuisances in the authorised development.

(2) The byelaws contained in Schedule 13 (London Resort Byelaws) have effect in relation to the areas shown as Works Nos. 3a, 3b, 4, 9a, 9b, 11, 12, 13, 14a, 14b, 14c, 14d, 15, 16, 17a, 17b, 18a, 18b, 19a, 19b, 19c, 22, 23, 24a, 24b, 24c and 25 on the works plans and continue to have effect until such time as they are amended or revoked by further byelaws made under paragraph (1) and in each case are to be treated as if they are byelaws that have been made by the undertaker under paragraph (1) and confirmed by the Secretary of State for the purposes of article 52 (confirmation of byelaws) on the date this Order comes into force.

(3) Without limitation on the scope of paragraph (2) byelaws made under this article may provide for—

- (a) regulating the admission to, the movement within, and the departure from the authorised development;
- (b) preventing damage or injury to any goods, vehicles, plant, machinery, property or person within the authorised development;
- (c) regulating the conduct of all persons within the authorised development not being members of a police force or officers or servants of the Crown or officers or servants of a local authority whilst in the execution of their duties;
- (d) preventing and removing obstructions or impediments within the authorised development;
- (e) temporarily regulating within the river Thames adjacent to the authorised development the use of yachts, sailing boats, sailboards, rowing boats, rowing punts, pleasure craft and other small craft;
- (f) regulating or prohibiting the activities within the river Thames adjacent to the authorised development of divers, surfers, water skiers and other persons engaged in similar recreational pursuits but not so as to prohibit the use for navigation of the vessels referred to in sub-paragraph (e);
- (g) prohibiting persons in or entering the authorised development, or any part of the authorised development, from smoking in open spaces in the authorised development;
- (h) regulating the movement and parking of vehicles within the authorised development; and
- (i) regulating the exercise of the powers vested in the undertaker.
- (j) Byelaws made under this article may-
- (k) provide for imposing upon persons found guilty on summary conviction of offending against them, or against any condition, requirement or direction imposed, made or given under them, fines not exceeding level 3 on the standard scale; and

---

(a) S.I. 2019/359.

- (1) make different provision for different parts of the authorised development.

### **Fixed penalty notices relating to byelaws**

**52.**—(1) This article applies where it appears to an authorised person that a person has committed an offence under byelaws made under article 50 (Byelaws).

(2) The authorised person may serve on that person a fixed penalty notice in respect of the offence.

(3) Where a person is given a fixed penalty notice under this article in respect of an offence—

- (a) no proceedings may be instituted for that offence before the expiration of 14 days after the date of the notice; and
- (b) that person may not be convicted of the offence if the fixed penalty is paid before the expiration of 14 days after the date of the notice.

(4) A fixed penalty notice must state—

- (a) the amount of the fixed penalty;
- (b) particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence;
- (c) the time by which and the manner (including the number to be used for payments by credit or debit card) in which the fixed penalty must be paid; and
- (d) that proceedings may be instituted if payment is not made within the time specified in the fixed penalty notice.

(5) The amount of the fixed penalty is—

- (a) one fifth of the maximum amount of the fine to which the person to whom the fixed penalty notice is issued would be liable on summary conviction provided that person pays the fixed penalty in full within 7 days of issue of the fixed penalty notice; or
- (b) one half of the maximum amount of the fine to which the person to whom the fixed penalty notice is issued would be liable on summary conviction.

(6) An authorised person may require a person to whom this article applies to pay a deposit of one tenth of the maximum amount of the fine to which a person may be liable under level 3 on the standard scale on accepting a fixed penalty notice if that person fails to provide, when requested, a residential address in the United Kingdom.

(7) Payment of the deposit must be paid by such means as the undertaker may specify on its website as being acceptable.

(8) The undertaker must apply the deposit towards payment of the fixed penalty.

(9) In any proceedings a certificate which—

- (a) purports to be signed on behalf of an office of the undertaker; and
- (b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,

is evidence of the facts stated.

### **Confirmation of byelaws**

**53.**—(1) Byelaws made by the undertaker under this Order will not come into operation until they have been confirmed by the Secretary of State.

(2) At least one month before an application for confirmation of byelaws is made by the undertaker to the Secretary of State, notice of the intention to apply for confirmation and of the place at which and times during which a copy of the byelaws will be open to inspection must be published as follows—

- (a) once in the London Gazette; and
- (b) once in each of two successive weeks in a local newspaper circulating in the district of Kent County Council and Thurrock Council.

(3) Not later than the first date on which the notice under paragraph (2) is published, the undertaker must send a copy of the notice to the Chief Executive Officers of Ebbsfleet Development Corporation, Kent County Council, Dartford Borough Council, Gravesham Borough Council and Thurrock Council and to the Secretary of State.

(4) During a period of at least one month before application is made for confirmation of the byelaws, a copy of the byelaws must be kept by the undertaker at the offices of Ebbsfleet Development Corporation, Kent County Council, Dartford Borough Council, Gravesham Borough Council and Thurrock Council and may at all reasonable hours be open to public inspection without payment.

(5) The undertaker must supply a copy of the byelaws or of part of the byelaws to a person who applies for it on payment of a reasonable charge.

(6) During the period of one month after completion of the publication of any notice required by paragraph (2), any person may make in writing to the Secretary of State any objection to or representation respecting the byelaws to which the notice relates.

(7) Subject to paragraph (8), the Secretary of State may confirm the byelaws in the form submitted to the Secretary of State with such modifications as the Secretary of State thinks fit or may refuse to confirm them.

(8) Where the Secretary of State proposes to make a modification that appears to the Secretary of State to be substantial the Secretary of State must inform the undertaker and require it to take any steps the Secretary of State considers necessary for informing persons likely to be concerned with the modification, and the Secretary of State must not confirm the byelaws until such period has elapsed as the Secretary of State thinks reasonable for consideration of, and comment upon, the proposed modification by the undertaker and by other persons who have been informed of it.

(9) A copy of the byelaws when confirmed must be printed and deposited by the undertaker at the offices of Ebbsfleet Development Corporation, Kent County Council, Dartford Borough Council, Gravesham Borough Council and Thurrock Council and may at all reasonable hours be open to public inspection without payment, and a copy of the byelaws will on application be furnished to any person on payment of such reasonable sum as the undertaker may determine.

(10) A copy of the byelaws when confirmed must also be made available on [specify website].

(11) This article does not have effect in relation to the byelaws contained in Schedule 13 (London Resort Byelaws).

### **No double recovery**

**54.** Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law, or under two or more different provisions of this Order.

### **Guarantees in respect of payment of compensation**

**55.—**(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any land unless it has first put in place either—

- (a) a guarantee, the form and amount of which has been approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2); or
- (b) an alternative form of security, the form and amount of which has been approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2).

(2) The provisions are—

- (a) article 21 (compulsory acquisition of land);
- (b) article 24 (compulsory acquisition of rights and imposition of restrictive covenants);
- (c) article 25 (private rights over land);



- (d) article 29 (acquisition of subsoil or air-space only)
- (e) article 30 (rights under or over streets);
- (f) article 31 (temporary use of land for carrying out the authorised development);
- (g) article 32 (temporary use of land for maintaining the authorised development); and
- (h) article 33 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under this Order is to be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

#### **Disregard of certain improvements, etc.**

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

- (a) any interest in land; or
- (b) any enhancement of the value of any interest in land by reason of any building erected, works carried out 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 carrying out of the works or the making of the improvement or alteration as part of the authorised development was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

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

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

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

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 24 (compulsory acquisition of rights and imposition of restrictive covenants), the tribunal must set off against the value of the rights so acquired—

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

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

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

#### **Development consent obligation**

**58.**—(1) The undertaker may enter into an obligation relating to the authorised development under section 106 of the 1990 Act in respect of any land within the Order limits even though the undertaker may not be the owner of such land or any interest in it; and this paragraph applies to such an obligation entered into before or after this Order is made.

(2) From the date on which the undertaker acquires any land that is subject to an obligation to which paragraph (1) applies, section 106 of the 1990 Act applies as if the undertaker had been the owner of the land at the date of entering into the obligation.

(3) In this article and article 44, “obligation” has the same meaning as “planning obligation” in section 106 of the 1990 Act.

Signed by authority of the Secretary of State for Housing, Communities and Local Government

	<i>Name</i>
	Designation
Date	Ministry of Housing, Communities and Local Government

## SCHEDULES

### SCHEDULE 1

Article 2

### AUTHORISED DEVELOPMENT

#### PART 1

#### NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECT

**In the County of Kent, the District of Dartford, the District of Gravesham and in the administrative area of Thurrock Council.**

The Works are situated as follows—

- (a) in respect of the whole of Work Nos. 1, 2, 3a, 4, 5a, 5b, 6, 7, 8, 9a, 9b, 10a, 10b, 11, 12, 13, 14a, 14b, 14c, 14d, 15, 17, 18a, 18b, 19a, 19b, 19c, 20, 21c, 23, 24a, 24b, 25, 26, 27a, 27b, 28a, 28b and 29 in the District of Dartford and the District of Gravesham; and
- (b) in respect of the whole of Work Nos. 3b, 16, 21a, 21b and 22 in the administrative area of Thurrock Council.

The authorised development comprises of a nationally significant infrastructure project which, in accordance with a direction made by the Secretary of State under section 35 of the 2008 Act on 9th May 2014, is development for which development consent is required; and associated development as defined in section 115(2) of the 2008 Act, comprising as follows-

**Work No. 1** — The construction of buildings and facilities for tourism and leisure uses including—

- (a) events spaces, themed rides, entertainment venues, theatres, and cinemas;
- (b) a covered market and ancillary facilities with retail, dining and entertainment facilities;
- (c) guest facilities;
- (d) the construction of two internal visitor entrance areas comprising ticketing point and ancillary commercial uses;
- (e) hard and soft landscaping including amenity water features such as ponds and canals;
- (f) pedestrian and cycle access routes including the provision of pedestrian and cycle infrastructure; and
- (g) service and emergency service vehicle routes and associated facilities.

**Work No. 2** — The construction of buildings and facilities for tourism and leisure uses including—

- (a) events spaces, themed rides, entertainment venues, theatres and cinemas;
- (b) ancillary retail, dining and entertainment facilities;

- (c) guest facilities;
- (d) pedestrian and cycle access routes including the provision of pedestrian and cycling infrastructure;
- (e) hard and soft landscaping including amenity water features such as ponds and canals;
- (f) the construction of a helipad and associated facilities;
- (g) service and emergency service vehicle routes and associated facilities; and
- (h) the construction of a temporary remediation processing compound during constructions works on the remainder of the site.

## PART 2

### ASSOCIATED DEVELOPMENT

Associated development within the meaning of section 115(2) (development for which consent may be granted) of the 2008 Act comprising—

**Work No. 3a** — The construction of up to three multi storey parking buildings with drop-off and taxi provision as part of a maximum provision of 7,500 car spaces, overflow coach parking spaces, 350 motorcycle spaces and 250 secure cycle spaces for visitors.

**Work No. 3b** — The construction of a multi storey parking building with drop-off and taxi provision as part of a maximum provision of 2,500 car spaces and 50 coach parking spaces for visitors.

**Work No. 4** — Highway works comprising works to the A2(T) to provide a junction connecting the A2(T) with the road leading to the Entertainment Resort and associated works related to the safeguarding and diversion of underground utility connections in that area.

**Work No. 5a** — The construction of two hotels with a total of up to 1,900 rooms providing family, upmarket, luxury and themed accommodation.

**Work No. 5b** — The construction of one hotel with up to 850 rooms providing family, upmarket, luxury and themed accommodation.

**Work No. 6** — The construction of one hotel with up to 800 rooms and covered market with food and beverage offer ancillary uses including kitchens, storage, loading, servicing and laundry services, including music and entertainment venues.

**Work No. 7** — The construction of a conferention centre (a combined conference and convention centre) with a floor area of up to 11,000 m<sup>2</sup>, an eSports Arena with a total floorspace of up to 18,000 m<sup>2</sup> and ancillary accommodation and loading bay.

**Work No. 8** — The construction of a waterpark with majority of area enclosed including hard and soft landscaping and external pool area.

**Work No. 9a** — The construction of buildings and facilities up to a maximum of 8 ha in area, to support the Entertainment Resort operations including—

- (a) emergency and security services facilities;
- (b) maintenance facilities;
- (c) costuming facilities;
- (d) employee administration and welfare;
- (e) medical facilities;
- (f) offices;
- (g) storage facilities;
- (h) central kitchen facilities;
- (i) service roads and access roads connection to local network and resort road;

- (j) hard and soft landscaping including amenity features; and
- (k) staff parking spaces.

**Work No. 9b** — The construction of buildings and facilities to support the Entertainment Resort of up to 7,500 sqm in area including—

- (l) maintenance facilities;
- (m) employee administration and welfare;
- (n) medical facilities;
- (o) offices;
- (p) storage facilities;
- (q) service roads and access roads connection to local network and resort road;
- (r) hard and soft landscaping including amenity features; and
- (s) associated parking.

**Work No. 10a** — The construction of a visitor centre and staff training facilities building with associated staff parking.

**Work No. 10b** — The construction of a staff training facilities building and concierge services for staff accommodation with associated parking.

**Work No. 11** — The construction of a road leading from the A2(T) to the Entertainment Resort (the “Resort Access Road”), including—

- (a) tunnels beneath the A226 London Road and the North Kent Railway Line;
- (b) a bridge deck adjacent to Ebbsfleet International Station (upon which part of Work No. 17a will be constructed);
- (c) a new bridge structure over the Resort Access Road adjacent and permitting connection to the existing HS1 “Bridge to Nowhere”;
- (d) an extension to the existing A2260 bridge structure over HS1 (see Work No. 26 for associated works);
- (e) junctions with existing roads;
- (f) relocation of affected car parking within Ebbsfleet International Station Car Park D;
- (g) associated pedestrian and cycle way;
- (h) “people mover” road;
- (i) ecological mitigation and landscape works;
- (j) associated attenuation; and
- (k) works related to the safeguarding and diversion of underground utility connections and existing landfill systems in that area, including land affected by temporary works and construction compounds.

**Work No. 12** — The construction of a transport interchange area with coach driver facilities, pedestrian plaza, hard and soft landscaping including amenity water features such as ponds and canals, public art, pedestrian and cycle way, ‘people mover’ road, vehicle road, up to 150 coach parking and a maximum provision of 200 car parking spaces.

**Work No. 13** — The construction of pedestrian and cycle routes, ‘people mover’ road, vehicle road, landscape works and works related to the safeguarding and diversion of underground utility connections in that area.

**Work No. 14a** — The construction of roll-on roll-off and barge unloading and loading facilities and enhancement works on the existing wharf (Bell Wharf), refurbishment of White’s Jetty, dredging adjacent to Bell Wharf, the construction of warehouse services and infrastructure buildings including waste-water pumping station, and waste transfer facilities and the safeguarding and diversion of underground utility connections in that area.

**Work No. 14b** — The construction of services and infrastructure buildings including energy centre, district cooling and heating plant, service yard, welfare facilities, substations, data centres, security facilities, central backup generators, central gas boiler backup, water storage and treatment stations, and waste transfer facilities and the safeguarding and diversion of underground utility connections in that area.

**Work No. 14c** — The construction of services and infrastructure buildings including water storage, waste-water treatment, outfall to discharge treated effluent into the river Thames, leachate treatment facility and the safeguarding and diversion of underground utility connections in that area.

**Work No. 14d** — The construction of services and infrastructure buildings including energy centre, district cooling plant, service yard, welfare facilities, substations, data centres, security facilities, central backup generator, central gas boiler backup, water storage and treatment stations, and waste transfer facilities and the safeguarding and diversion of underground utility connections in that area.

**Work No. 15** — The construction of a river boat terminal and floating pontoon on the south side of the river Thames including dredging adjacent to Bell Wharf, temporary outfalls, barge berth and access ramp, and the creation of salt marshes.

**Work No. 16** — Works to the existing Tilbury Riverside Terminal including ticketing, luggage storage, food, beverage and catering facilities, the creation of pedestrian routes and landscaped amenity areas, a surface outfall within the existing river wall and a floating pontoon and flood defence works on the north side of the river Thames.

**Work No.17a** — The construction of a dedicated terminal building for visitors and staff arriving by rail at Ebbsfleet International Station, including ticketing, luggage storage, food, beverage and catering facilities (Work No. 11 also forms part of Work No. 17a, these will be segregated by levels).

**Work No. 17b** — Upgrade capacity works to Ebbsfleet International Station as required to improve circulation.

**Works Nos. 18a and 18b** — The creation of a green zone to include areas of environmental enhancement and wildlife habitat creation, landscape and ground works, pedestrian walkways and cycle routes and public amenity area, beside the river Thames including the creation of vehicle, pedestrian and cycle routes and allow flood defences to be constructed, and enhancement of road works for maintenance access to infrastructure within the marshes.

**Works Nos. 19a, 19b and 19c** — The enhancement of flood defence works including shore protection works, vehicle, cycle and pedestrian routes and the creation of a green zone to include areas of environmental enhancement and wildlife habitat creation, the creation and enhancement of salt marshes, landscape and ground works, pedestrian walkways and cycle routes and public amenity area, adjacent to the river Thames.

**Work No. 20** — The construction of staff accommodation of up to 500 dwellings, including associated vehicle, cycle and pedestrian routes, shared workspace and multifunctional spaces, small scale retail facilities for residents, outdoor and indoor amenity space, landscape works and subsoil works to London Road relating to the construction of tunnel through the chalk spine.

**Work No. 21a** — Roundabout upgrade works.

**Work No. 21b** — Highway upgrade and capacity works and new pedestrian bridge.

**Work No. 21c** — Highway upgrade and capacity works and pedestrian footpath enhancement works.

**Work No. 22** — Works to an existing surface level car park.

**Work No. 23** — The construction of a multi-storey car park for up to 1,200 parking spaces (only one of Work No. 23 and Work No. 25 may be constructed).

**Work No. 24a** — Landscape works related to ecological enhancement, pedestrian walkways and minor highways alterations and street works to improve pedestrian and cycle safety.

**Works Nos. 24b and 24c** — Landscape works related to ecological enhancement, pedestrian walkways, and drainage works.

**Work No. 25** — The construction of a multi-storey car park for up to 1,200 parking spaces (only one of Work No. 23 and Work No. 25 may be constructed).

**Work No. 26** — Highways improvements works to the A2260 for potential dualling of the carriageway on the vehicle bridge over HS1 and Work No. 11.

**Work No. 27a** — Works and connections related to the existing UKPN Ebbsfleet substation.

**Work No. 27b** — Works and connections related to the existing UKPN Northfleet East substation.

**Works Nos. 28a and 28b** — Temporary works and construction compounds related to Work No.11, and the creation of access to and relocation of affected car parking spaces within Ebbsfleet International Station Car Park D.

**Work No. 29** — Works to the existing landfill infrastructure including gas pipes and flares in order to construct Work No. 11.

### **Other relevant works**

In connection with and ancillary to Work Nos. 1 to 29 further associated development within the Order limits provided that such works do not give rise to any materially new or materially different adverse environmental effects in comparison with those reported in the environmental statement, consisting of—

- (a) ancillary support and servicing facilities;
- (b) internal roads, maintenance accesses and footways, and connection works at the interfaces with existing highways and associated structures;
- (c) bunds, embankments, swales, landscaping and boundary treatments, tunnels, earthworks and earthwork retaining structures;
- (d) footways, cycle tracks, bridleways and footpath linkages;
- (e) water supply works, drainage provision, pumping stations and surface water management systems including sustainable drainage systems, attenuation, culverting and outfalls into the river;
- (f) aids to navigation;
- (g) demolition of existing buildings and structures within the Order limits;
- (h) provision of security features to include security fencing, gatehouses, CCTV and ancillary measures;
- (i) public art;
- (j) resort signage including archways;
- (k) lighting;
- (l) general maintenance facilities;
- (m) enhancements to existing public transport infrastructure and services;
- (n) construction, diversion and connection of infrastructure to allow connection to existing electricity, gas, and water and waste water networks, including relocation of statutory undertakers' equipment where required;
- (o) drainage works;
- (p) hard and soft landscape works throughout the development, incorporating earth shaping;
- (q) provision of ecological mitigation;
- (r) works to protect features of archaeological and paleontological interest;
- (s) ancillary emergency response facilities such as medical and fire points; and

- (t) such other works as may be necessary or expedient for the purpose of or in connection with the construction (including site compounds) or use of the authorised development and which are within the scope of the environmental impact assessment recorded in the environmental statement or which are unlikely to give rise to any materially new or materially different environmental effects from those reported in the Environmental Statement.

## SCHEDULE 2 REQUIREMENTS

Articles 3 and 47

### PART 1 REQUIREMENTS

#### Interpretation

1.—(1) In this Schedule—

“appeal parties” means the relevant authority, the requirement consultee and the undertaker;

“business day” means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971(a);

“flood defence works” means the flood defence elements of Works Nos. 16, 19a, 19b and 19c;

“handover EMP” means the handover EMP as detailed in requirement 6(4);

“HS1” means the High Speed One railway;

“lead local flood authority” means Kent County Council and Thurrock Council as relevant;

“mitigation commitments” means the schedule of mitigation commitments (Chapter 22 of the environmental statement, application document 6.1.22);

“operational use” occurs when the authorised development is open to members of the public;

“phase” means a defined section or part of the authorised development, the extent of which is shown in a scheme submitted to and approved by the relevant planning authority under requirement 5 (phases of development);

“relevant authority” means the relevant planning authority, relevant highway authority, relevant street authority, Environment Agency or relevant owner of a watercourse, sewer or drain as may be appropriate to the consent or approval sought;

“requirement consultee” means any body named in a requirement which is the subject of an appeal as a body to be consulted by the relevant planning authority in discharging that requirement;

“the relevant highway authority” means, in any given requirement, the local highway authority for the area to which the requirement relates; and

“the relevant planning authority” means, in any given requirement, the local planning authority for the area to which the requirement relates.

(2) Where under any of the requirements the approval or agreement of the relevant highway authority or the relevant planning authority is required, that approval must be given in writing.

(3) Where an approval is required under the terms of any requirement or a document referred to in a requirement, or any requirement specifies “unless otherwise approved” or “unless otherwise agreed” by the relevant highway authority or the relevant planning authority such approval or agreement may only be given in relation to minor or immaterial changes where it has been

---

(a) 1971 c. 80.

demonstrated to the satisfaction of the relevant highway authority or the relevant planning authority that the subject matter of the approval or agreement sought is unlikely to give rise to any materially new or materially different environmental effects from those reported in the environmental statement.

(4) Where any requirement which requires the authorised development to be carried out in general accordance with the details approved by the relevant highway authority or by the relevant planning authority, the approved details are to be taken to include any amendments that may subsequently be approved in writing by the relevant highway authority or by the relevant planning authority.

### **Time limits**

2. The authorised development must commence no later than the expiration of 5 years beginning with the date that this Order comes into force.

### **Detailed design approval**

3.—(1) The authorised development must be designed in accordance with the design principles contained in the design and access statement and the design code, unless otherwise agreed in writing by the relevant planning authority, following consultation with Kent and Essex Police and National Highways, provided that the relevant planning authority is satisfied that any amendments to those documents would not give rise to any materially new or materially different adverse environmental effects in comparison with those reported in the environmental statement.

(2) Where amended details are approved under sub-paragraph (1), those details are deemed to be substituted for the corresponding document or drawings and the undertaker must make those amended details available in electronic form for inspection by members of the public.

(3) No phase of the authorised development is to commence until written details of the design for the phase containing that part of the authorised development has been approved in writing by the relevant planning authority. The written details shall include—

- (a) a visual illustration, including annotation, of how the proposals accord with the design and access statement and the design code;
- (b) site levels and finished floor levels;
- (c) buildings and structure elevations including any plant or roof structures;
- (d) boundary fencing, walls and other means of enclosure;
- (e) finishes and materials;
- (f) in relation to any highway accesses, a detailed plan showing dimensions, visibility splays and vehicle tracking;
- (g) a programme for the anticipated implementation, completion and bringing into operational use of that phase; and
- (h) confirmation of adequate funding of the construction and completion of that phase.

(4) Any works carried out in accordance with the approved design must be carried out in accordance with the approved design or with any amended design that may subsequently be approved by the relevant planning authority.

(5) The Town and Country Planning (Development Affecting Trunk Roads) Direction 2018 shall apply to an application to amend the preliminary scheme design under paragraph (1) as though it were an application for planning permission to which those directions apply, and consultation carried out with National Highways under paragraph (1) is deemed to be consultation under article 18 of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

### **Pre-Commencement Works**

4. No pre-commencement works forming part of the authorised works can start until [*to be discussed what controls should be included here*].



## **Phases of development**

5.—(1) No phase of the authorised development may commence until a written scheme setting out all the phases of the authorised development has been submitted to and approved by the relevant planning authority.

(2) The written scheme must include phasing details of—

- (a) ecological mitigation;
- (b) earthworks;
- (c) streets, highways and public rights of way;
- (d) surface water and foul drainage;
- (e) mains services;
- (f) details of a programme for the anticipated implementation, completion, occupation and use of each phase (“delivery programme”); and
- (g) details of the development to be constructed in each phase

(3) The authorised development must be carried out in accordance with the written scheme developed under sub-paragraph (1).

(4) The notification referred to in sub-paragraph (4) must be accompanied by a monitor and manage report detailing—

- (a) the environmental and transport impacts of the previous phase;
- (b) the effectiveness of the mitigation measures implemented to avoid or mitigate such impacts;
- (c) details of any proposed additional, or changes to existing, mitigation measures to improve its effectiveness (“monitor and manage mitigation”) prior to the commencement of the next phase of the authorised development; and
- (d) a programme for their implementation.

(5) The undertaker must implement the approved monitor and manage report.

(6) If, after the expiry of the period of [6] years from the date of publication of the Order the undertaker has begun but not completed the first phase of the authorised development approved pursuant to requirement [], the undertaker must submit for the approval of the relevant planning authority a scheme and timetable for either—

- (a) the decommissioning and removal of any part of the first phase which has begun but remains incomplete and scheme for the restoration of the land; or
- (b) the completion and bringing into operational use of the whole of the first phase of the authorised development within a period of [8] years from the date of publication of the Order.

(7) The undertaker must complete the works and operations set out in the approved scheme and timetable pursuant to sub-paragraph (8) not more than twenty four months from the date of such approval or such longer date as has been approved pursuant to sub-paragraph (8).

## **Maintenance and Replacement of authorised development**

6.—(1) In this requirement—

“Ride” means [ ];

“Main Building” means [ ];

(2) In exercising the power of maintenance of the authorised development under article [ ], the undertaker must not [replace] any Rides with a ride which is materially different or any Main Building with a building that is not in compliance with the Design Code without the consent of the local planning authority (such approval not to be unreasonably withheld or delayed).

## **Construction environmental management plan**

7.—(1) No phase of the authorised development is to commence until a written CEMP, substantially in accordance with the outline CEMP (application document 6.2.3.2), for that phase has been submitted to and approved in writing by the relevant planning authority, following consultation by the undertaker with the Environment Agency or Natural England to the extent that it relates to matters relevant to its function.

(2) The CEMP must include the mitigation measures set out in the mitigation commitments in the environmental statement and must include updated and finalised versions of the following documents each of which must be in substantial accordance with the version of that document as certified in accordance with article 44—

- (a) outline construction method statement;
- (b) outline employment and skills strategy;
- (c) construction workforce accommodation strategy;
- (d) operational environmental management plan;
- (e) construction traffic management plan;
- (f) landscape strategy;
- (g) landscape management plan;
- (h) public rights of way assessment and strategy;
- (i) remediation strategy;
- (j) ecological mitigation and management framework;
- (k) contaminated land management strategy;
- (l) outline operational waste management strategy
- (m) outline construction waste management plan;
- (n) energy strategy;
- (o) dust management plan;
- (p) preliminary navigational risk assessment;
- (q) schedule of accommodation;
- (r) economic and regeneration statement;
- (s) utilities statement
- (t) surface water and drainage strategy
- (u) transport assessment
- (v) historic environment framework;
- (w) clean air strategy;

(3) The CEMP must also include measures to control and manage surface water during construction and to ensure that any temporary surface water drainage provision does not increase flood risk.

(4) The authorised development must be carried out in accordance with an approved CEMP.

(5) No phase of the authorised development is to be brought into operational use until an operation and maintenance environmental management plan for that phase has been submitted to and approved in writing by the relevant planning authority, following consultation by the undertaker with the Environment Agency, Kent County Council and Natural England to the extent that it relates to matters relevant to its functions.

(6) The operation and maintenance environmental management plan must be based on the relevant CEMP approved for that phase taking into account any relevant monitor and manage report and must include the following documents—

- (a) outline construction method statement;
- (b) outline employment and skills strategy;

- (c) construction workforce accommodation strategy;
- (d) operational environmental management plan;
- (e) construction traffic management plan;
- (f) landscape strategy;
- (g) landscape management plan;
- (h) public rights of way assessment and strategy;
- (i) remediation strategy;
- (j) ecological mitigation and management framework;
- (k) contaminated land management strategy;
- (l) outline operational waste management strategy
- (m) outline construction waste management plan;
- (n) energy strategy;
- (o) dust management plan;
- (p) preliminary navigational risk assessment;
- (q) schedule of accommodation;
- (r) economic and regeneration statement;
- (s) utilities statement
- (t) surface water and drainage strategy
- (u) transport assessment
- (v) historic environment framework;
- (w) clean air strategy;

(7) Each phase of the authorised development must be operated and maintained in accordance with the relevant approved operation and maintenance environmental management plan for that phase.

### **Landscaping**

**8.**—(1) No phase of the authorised development is to commence until a landscape management plan, in accordance with the outline landscape management plan (application reference 6.2.11.8) and substantially in accordance with the Landscape Strategy (document reference 6.2.11.7) has been submitted to and approved in writing by the relevant planning authority.

(2) The authorised development must be carried out in accordance with the approved landscape management plan referred to in sub-paragraph (1).

(3) No phase of the authorised development is to commence until a landscaping scheme which sets out details of all proposed hard and soft landscaping works and which has been submitted to and approved in writing by the relevant planning authority, following consultation with Kent and Essex Police and that phase of the authorised development must be carried out in accordance with the approved landscaping scheme.

(4) The landscaping scheme prepared under sub-paragraph (3) must—

- (a) reflect the design principles document and the mitigation measures set out in the mitigation commitments including the Landscape Strategy (document reference 6.2.11.7);
- (b) accord with the landscape management plan approved under sub-paragraph (1);
- (c) be based on the environmental masterplan annexed to the environmental statement; and
- (d) include details of—
  - (i) location, number, species mix, size and planting density of any proposed planting;
  - (ii) cultivation, importing of materials and other operations to ensure plant establishment;

- (iii) existing trees and vegetation to be retained, with measures for their protection during the construction period;
- (iv) proposed finished ground levels;
- (v) implementation timetables for landscaping works; and
- (vi) measures for the replacement, in the first available planting season, of any tree or shrub planted as part of the landscaping scheme that, within a period of 5 years or such period as may be specified in the scheme after the completion of the part of the authorised development to which the relevant landscaping scheme relates, dies, becomes seriously diseased or is seriously damaged in the construction of the authorised development.

(5) All landscaping works must be carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.

(6) A landscaping scheme submitted and approved under sub-paragraph (3) may be submitted and approved in relation to part of the authorised development.

### **Fencing and other means of enclosure**

**9.**—(1) No phase of the authorised development is to commence until written details of all proposed permanent external fences, walls or other means of enclosure for that phase have been submitted to and approved in writing by the relevant planning authority.

(2) The authorised development must be carried out in accordance with the details as approved from time to time in writing by the relevant planning authority.

### **Lighting details**

**10.**—(1) Prior to the commencement of each phase of the authorised development, details of the proposed lighting in that phase, which must be in substantial accordance with the lighting statement (document reference 7.9) must be submitted to and approved in writing by the relevant planning authority, following consultation with Kent and Essex Police [and the Port of London Authority].

(2) The approved lighting scheme must be implemented and maintained as approved from time to time during operation of the authorised development by the relevant planning authority, following consultation with Kent and Essex Police [and the Port of London Authority] and no external lighting other than that approved under this requirement is to be installed.

(3) The details submitted under this requirement must include details of any lighting on any gantry cranes.

### **Flood risk and surface water discharge**

**11.**—(1) No phase of the authorised development which encroaches upon the existing floodplain of the river Thames and its tributaries is to be brought into use until the flood defence works have been completed.

(2) The flood defence works are to be constructed as part of the authorised development and in advance of the operation of that phase unless another mitigation option approved by the Environment Agency has already been implemented and the Environment Agency states in writing that part or all of the flood defence works are not required to be constructed.

(3) The details of the flood defence works must accord with any agreement reached with the Environment Agency in consultation with the drainage board concerned and the lead local flood authority, or any subsequent variation of such agreement

(4) The authorised development must be carried out in accordance with the mitigation measures detailed within the Flood Risk Assessment submitted with the application (application reference 6.2.17.1) or be carried out in accordance with any variation to those mitigation measures agreed in writing by the relevant planning authority following consultation with the Environment Agency, the

lead local flood authority and the approving body under Schedule 3 (sustainable drainage) to the Flood and Water Management Act 2010(a).

(5) The elements of the authorised development which encroach or directly impact upon HS1 must not be commenced until such time as the detail of the relevant bridging structure and flow control structure have been submitted to and approved in writing by the relevant planning authority following consultation with HS1.

(6) The structures that fall within sub-paragraph (5) must be implemented as approved or in accordance with any variation to the approved details agreed in writing by relevant planning authority following consultation with the Environment Agency or lead local flood authority..

(7) No phase of the authorised development is to commence until for that phase written details of the surface water drainage system (to include a report, calculations, schematics and detailed drawings or other technical specifications as required to demonstrate the effective operation of the proposed drainage system), including the measures set out in the mitigation commitments including means of pollution control and substantially in accordance with the surface water drainage strategy (document reference 6.2.17.2), have been submitted to and approved in writing by the relevant planning authority following consultation by the undertaker with the lead local flood authority and the EA.

(8) The surface water drainage system must be constructed in accordance with the approved details.

(9) Within 28 days of the completion of construction of the approved surface water drainage the undertaker must submit for the written approval of the relevant planning authority in consultation with the lead local flood authority, a verification report of that surface water drainage system that confirms the system is operating in accordance with the approved details.

(10) Prior to the commencement of any element of the authorised development which directly affects a watercourse or floodplain, a construction working method statement for such element to cover all works in, over under or within 10 metres of the top of the bank of the watercourse or its floodplain must be submitted to and agreed in writing by the relevant planning authority.

(11) Thereafter the development must be carried out in accordance with the approved scheme and any subsequent amendments.

### **Contaminated land and groundwater**

**12.—**(1) No phase of the authorised development is to commence until a contaminated land management strategy, substantially in the form of the draft contaminated land management strategy (application reference 6.2.18.9) has been submitted to and approved in writing by the relevant planning authority in consultation with the Environment Agency.

(2) The authorised development must be carried out in accordance with the approved contaminated land management strategy referred to in sub-paragraph (1).

(3) In the event that contaminated land, including groundwater, is found at any time when carrying out the authorised development which was not previously identified in the environmental statement, it must be reported as soon as reasonably practicable to the relevant planning authority and the Environment Agency, and the undertaker must complete a risk assessment of the contamination in consultation with the relevant planning authority and the Environment Agency.

(4) No further construction operations are to be carried out in or around the part of the authorised development in which the contamination is identified until a remediation strategy is submitted to and approved in writing by the relevant planning authority, following consultation with the Environment Agency.

(5) The remediation strategy must include details of the measures to be taken to render the land fit for its intended purpose and must be submitted to and approved in writing by the relevant planning authority, following consultation by the undertaker with the Environment Agency.

---

(a) 2010 c. 29. Schedule 3 was amended by S.I. 2012/1659 and S.I. 2013/755.

(6) Remediation measures must be carried out in accordance with the remediation strategy approved under sub-paragraph (5).

### **Waste**

**13.—**(1) No phase of the authorised development is to commence until a construction waste management plan, substantially in the form of the outline construction waste management plan (application reference 6.2.19.2) has been submitted to and approved in writing by the relevant planning authority in consultation with the Environment Agency.

(2) The authorised development must be constructed in accordance with the construction waste management plan referred to in sub-paragraph (1).

(3) No phase of the authorised development is to be brought into operation until an operational waste management strategy, substantially in the form of the outline operational waste management strategy (application reference 6.2.19.1) has been submitted to and approved in writing by the relevant planning authority in consultation with the Environment Agency.

(4) The authorised development must be operated in accordance with the operational waste management strategy referred to in sub-paragraph (3).

### **Protected species**

**14.—**(1) No phase of the authorised development is to commence until for that phase final preconstruction survey work has been carried out to establish whether European or nationally protected species are present on any land affected or likely to be affected by that phase of the authorised development.

(2) Following pre-construction survey work or at any time when carrying out the authorised development, where—

- (a) a protected species is shown to be present, or where there is a reasonable likelihood of it being present;
- (b) application of the relevant assessment methods used in the environmental statement show that a significant effect is likely to occur which was not previously identified in the environmental statement; and
- (c) that effect is not addressed by any prior approved scheme of protection and mitigation established in accordance with this paragraph,

the relevant parts of the relevant works must cease until a scheme of protection and mitigation measures has been submitted to and approved in writing by the relevant planning authority.

(3) The undertaker must consult with Natural England on the scheme referred to in sub-paragraph (2) prior to submission to the relevant planning authority for approval, except where a suitably qualified and experienced ecologist, holding where relevant an appropriate a licence relating to the species in question, determines that the relevant works do not require a protected species licence.

(4) The relevant works under sub-paragraph (2) must be carried out in accordance with the approved scheme, unless otherwise agreed by the relevant planning authority after consultation with Natural England, and under any necessary licences.

### **Ecological mitigation and management**

**15.—**(1) No phase of the authorised development is to commence until an ecological mitigation and management framework, substantially in the form of the draft ecological mitigation and management framework (application reference 6.2.12.3) has been submitted to and approved in writing by the relevant planning authority, following consultation with Natural England.

(2) The authorised development must be carried out in accordance with the approved ecological mitigation and management framework referred to in sub-paragraph (1).

## **Biosecurity**

**16.**—(1) No phase of the authorised development is to commence until a biosecurity plan, in accordance with the outline biosecurity plan (application reference 6.2.13.9) has been submitted to and approved in writing by the relevant planning authority.

(2) The authorised development must be carried out in accordance with the approved biosecurity plan referred to in sub-paragraph (1).

## **Historic environment**

**17.**—(1) No phase of the authorised development is to commence and no intrusive survey carried out under article 20 is to be carried out, until an historic environmental framework and mitigation strategy, substantially in the form of the draft historic environmental framework and mitigation strategy (application reference 6.2.14.9) has been submitted to and approved in writing by the relevant planning authority following consultation with Kent County Council and Historic England.

(2) The authorised development must be carried out in accordance with the historic environmental framework and mitigation strategy referred to in sub-paragraph (1).

## **Construction traffic management plan**

**18.**—(1) No phase of the authorised development is to commence until a construction traffic management plan for the construction of that phase, substantially in accordance with the draft construction traffic management plan (application document 6.2.9.1) has been submitted to and approved in writing by the relevant planning authority, following consultation with the highway authority.

(2) The authorised development must be carried out in accordance with the traffic management plan referred to in sub-paragraph (1).

## **Operational transport management plan**

**19.**—(1) No phase of the authorised development is to be brought into operational use until an operational transport management plan that includes the operational mitigation measures described in the Transport Assessment (document reference 6.1.9) has been approved in writing by the relevant planning authority, following consultation with the highway authority, National Highways and Network Rail.

(2) The operational transport management plan must include the following plans which must be in substantial accordance with the correspondingly titled appendices to the Transport Assessment (document reference 6.1.9)—

- (a) travel demand management plan;
- (b) delivery & service plan;
- (c) bus strategy plan;
- (d) rail strategy plan; and
- (e) off site parking plan.

(3) The operational transport management plan must include measures to ensure that not more than 4 non-emergency helicopter movements per week are made to and from the authorised development.

## **Employment and skills**

**20.**—(1) No phase of the authorised development is to commence until an employment and skills strategy, substantially in the form of the outline employment and skills strategy (application reference 6.2.7.7) has been submitted to and approved in writing by the relevant planning authority, following consultation with Kent County Council.

(2) The authorised development must be carried out in accordance with the employment and skills strategy referred to in sub-paragraph (1).

### **Energy**

**21.**—(1) No phase of the authorised development is to commence until an energy strategy for that phase, substantially in the form of the draft energy strategy (application reference 6.2.20.3) has been submitted to and approved in writing by the relevant planning authority.

(2) The authorised development must be carried out in accordance with the energy strategy referred to in sub-paragraph (1).

### **Navigational risk**

**22.**—(1) No phase of the authorised development is to commence until a navigational risk assessment for that phase, substantially in the form of the draft navigational risk assessment (application reference 6.2.10.1) has been submitted to and approved in writing by the PLA, following consultation with the Port of Tilbury London Ltd, the relevant planning authority and the MMO.

(2) The authorised development must be carried out in accordance with the navigational risk assessment referred to in sub-paragraph (1).

(3) In this Requirement, “Gate 1” means Work Nos. [ ];

(4) Within [ 12 ] months of the cessation of commercial operation of Gate 1 the undertaker must submit to the relevant planning authority an explanation of why such commercial operation has ceased and how and when it is anticipated such operation will recommence.

(5) If the commercial operation of Gate 1 has ceased for a period of more than 18 months, the undertaker must—

- (a) submit a programme of potential interim uses for Gate 1 to the relevant planning authority for approval and once approved carry out and comply with such programme; or
- (b) discuss with and provide a report to the relevant planning authority the options to proceed which must include consideration of—
  - (i) proposals for the undertaker to obtain the required funding for the continued commercial operation of Gate 1
  - (ii) proposals for the undertaker to adjust its commercial operation of Gate 1 to ensure continued beneficial use of the relevant phase or part of a phase;
  - (iii) preparing and submitting for consent proposals for alternative development or uses of Gate 1; and
  - (iv) disposal by the undertaker of part or all of its interests in the authorised development to an alternative undertaker.

(6) If the commercial operations Gate 1 have ceased for a period of more than 24 months, unless otherwise agreed with or specified by the relevant planning authority, the undertaker must either within a further 3 months—

- (a) apply for permission or consent for a proposed change of use or other alteration, measure or development required for Gate 1 to be brought back into beneficial use; or
- (b) submit a restoration plan to the relevant planning authority for its written approval, such restoration plan must include either—
  - (i) measures for the removal of Gate 1 and restoration of the land; and a timetable for implementation; or
  - (ii) measures for restoring Gate 1 into commercial operation within 12 months of the date of approval of the restoration plan,

and the restoration plan must be implemented as approved.



(7) If the commercial operation of a Gate 1 have ceased for a period of more than 48 months, unless otherwise agreed with or specified by the relevant planning authority, the undertaker must—

- (a) submit a restoration plan to the relevant planning authority for its written approval, such restoration plan must include either-
- (b) measures for the removal of Gate 1 and measures for the restoration of the land; and a timetable for implementation; or
- (c) measures for restoring Gate 1 into commercial operation within 12 months of the date of approval of the restoration plan,

and the restoration plan must be implemented as approved.

### **Offsite landscape and biodiversity mitigation**

**23.**—(1) No phase of the authorised development is to commence until an offsite landscape and biodiversity mitigation establishment and management plan which must be in substantial accordance with the general principles of offsite ecological mitigation (document reference 6.2.12.10) has been submitted to and approved in writing by the [relevant planning authority] following consultation with each of the relevant planning authorities, Natural England, Environment Agency and Marine Management Organisation] for that phase.

(2) The offsite landscape and biodiversity mitigation establishment and management plan must include details of the—

- (a) location(s) of the offsite landscape and biodiversity mitigation;
- (b) the proportion, if any, of offsite landscape and biodiversity mitigation secured by means of a contribution pursuant to a relevant development consent obligation;
- (c) methodology for the establishment of offsite habitats;
- (d) measures for the long term management of established offsite landscape and biodiversity mitigation;
- (e) an assessment of the biodiversity loss of the phase of the authorised development to which the offsite landscape and biodiversity mitigation and management plan relates;
- (f) an assessment of the biodiversity gain attributable to the offsite landscape and biodiversity mitigation and management plan;
- (g) measures to ensure that biodiversity loss from the phase of the authorised development does not occur until the commensurate biodiversity gain has been established through the implementation of the offsite landscape and biodiversity mitigation establishment and management plan;
- (h) measures for the ongoing monitoring and frequency of reporting to each of the bodies referred to in paragraph (1) on the biodiversity gain attributable to the offsite landscape and biodiversity mitigation and management plan; and
- (i) measures to ensure that, if the ongoing monitoring of the biodiversity gain attributable to the offsite landscape and biodiversity mitigation are shown to be less than the biodiversity loss attributable to the relevant phase of the authorised development, adequate additional provision is made to equal or exceed that loss.

(3) The undertaker must implement each offsite landscape and biodiversity mitigation establishment and management plan in full.

### **Amendments to approved details**

**24.** With respect to any requirement which requires the authorised development to be carried out in accordance with the details or schemes approved under this Schedule, the approved details or schemes are taken to include any amendments that may subsequently be approved by the relevant planning authority.

### **Section 106 agreement**

25.—(1) No part of the authorised development is to commence until an agreement pursuant to section 106 of the Town and Country Planning Act 1990 (a “section 106 agreement”) has been secured between the local planning authorities and the undertaker.

(2) The section 106 agreement mentioned in sub-paragraph (1) may be altered or varied only with the consent of all of the parties to the agreement.

(3) The section 106 agreement must reflect that of [*insert date*], as certified by the Secretary of State.

## **PART 2**

### **PROCEDURE FOR DISCHARGE OF REQUIREMENTS**

#### **Applications made under Part 1**

1. Where an application has been made to a relevant authority for any consent, agreement or approval required by a requirement (including consent, agreement or approval in respect of part of a requirement) included in this Order, the relevant authority must give notice to the undertaker of the decision on the application within a period of 8 weeks beginning with—

- (a) the day immediately following that on which the application is received by the authority;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 15(4) (further information); or
- (c) such longer period as may be agreed between the parties.

#### **Further information**

2.—(1) In relation to any part of an application made under this Schedule, the relevant authority has the right to request such further information from the undertaker as is necessary to enable the authority to consider the application.

(2) In the event that the authority considers such further information to be necessary the authority must, within 21 business days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates. In the event that the authority does not give such notification within that 21 business day period the authority is deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.

(3) Where further information is requested under this paragraph in relation to part only of an application, that part is treated as separate from the remainder of the application for the purposes of calculating the time periods referred to in paragraph 14 (applications made under Part 1) and in this paragraph.

(4) In this paragraph, “business day” means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971(a).

#### **Fees**

3.—(1) Where an application is made to a relevant planning authority for any consent, agreement or approval required by a requirement included in Schedule 2 to this Order, a fee must be paid to the relevant planning authority as follows—

- (a) a fee of £116; or
- (b) such other fee as may be prescribed (under sections 303 and 333(2A) of the 1990 Act for the discharge of conditions attached to a planning permission).

---

(a) 1971 c. 80.

- (2) Any fee paid under this Schedule must be refunded to the undertaker within 4 weeks of—
- (a) the application being rejected as invalidly made; or
  - (b) the relevant planning authority failing to determine the application within 4 weeks from the date on which it is received,

unless within that period the undertaker agrees in writing that the fee may be retained by the relevant planning authority and credited in respect of a future application.

### **Appeals to the Secretary of State**

**4.**—(1) The undertaker may appeal to the Secretary of State in the event that a relevant authority refuses an application for any approval required by this Schedule or grants such an approval subject to conditions.

(2) The appeal process applicable under sub-paragraph (1) is as follows—

- (a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision, or the date by which a decision was due to be made, as the case may be;
- (b) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the local authority and affix a notice to a conspicuous object on or near the site of the works which are the subject of such appeal, which must give details of the decision of the local authority and notice that an appeal has been made together with the address within the locality where the appeal documents may be inspected and details of the manner in which representations on the appeal may be made;
- (c) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to consider the appeal (“the appointed person”) and must notify the appeal parties of the identity of the appointed person, a start date and the address to which all correspondence for their attention should be sent;
- (d) the local authority must submit their written representations to the appointed person in respect of the appeal within 10 business days of the start date and must ensure that copies of their written representations and any other representations as sent to the appointed person are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (e) the appeal parties must make any counter-submissions to the appointed person within 10 business days of receipt of written representations under sub-paragraph (d); and
- (f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable.

(3) The appointment of the person under sub-paragraph (2)(c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(4) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal, the appointed person must as soon as practicable notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

(5) Any further information required under sub-paragraph (4) must be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person.

(6) The appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day.

(7) The revised timetable for the appeal must require submission of written representations to the appointed person within 10 business days of the agreed date but must otherwise be in accordance with the process and time limits set out in sub-paragraphs (2)(c) to (e).

(8) On an appeal under this paragraph, the appointed person may—

- (a) allow or dismiss the appeal; or

(b) reverse or vary any part of the decision of the local authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to the appointed person in the first instance.

(9) The appointed person may proceed to a decision on an appeal taking into account such written representations as have been sent within the relevant time limits and in the sole discretion of the appointed person such written representations as have been sent outside the relevant time limits.

(10) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case. The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(11) The appointed person may give directions as to the costs of the appeal and as to the parties by whom such costs are to be paid.

(12) In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the relevant Planning Practice Guidance published by the Ministry for Housing, Communities and Local Government or such guidance as may from time to time replace it.

### **Anticipatory steps towards compliance with any requirement**

5. If before the coming into force of this Order the undertaker or any other person has taken any steps that were intended to be steps towards compliance with any provision of Part 1 of this Schedule, those steps may be taken into account for the purpose of determining compliance with that provision if they would have been valid steps for that purpose had they been taken after this Order came into force.

## **SCHEDULE 3**

Article 10

### **STREETS SUBJECT TO STREET WORKS**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to street works</i>
Dartford Borough Council	A2 to A2260 Ebbsfleet Junction
Dartford Borough Council	A226 Galley Hill Road
Dartford Borough Council	A2260 Ebbsfleet Gateway
Dartford Borough Council	Craylands Lane
Dartford Borough Council	High Street
Dartford Borough Council	International Way
Dartford Borough Council	Pilgrims Road
Dartford Borough Council	Tiltman Avenue
Dartford Borough Council and Gravesham Borough Council	A2 Watling Street
Dartford Borough Council and Gravesham Borough Council	A226 London Road
Dartford Borough Council and Gravesham Borough Council	Lower Road
Dartford Borough Council and Gravesham Borough Council	Manor Way
Gravesham Borough Council	Hall Road
Thurrock Council	A1089 Ferry Road
Thurrock Council	A126 Dock Road
Thurrock Council	'Asda' Roundabout
Thurrock Council	Fort Road
Thurrock Council	St Andrew's Road
Thurrock Council	Thurrock Park Way

## SCHEDULE 4

Article 12

### STREETS SUBJECT TO PERMANENT ALTERATION OF LAYOUT

<i>(1)</i> <i>Street subject to alteration of layout</i>	<i>(2)</i> <i>Description of alteration of layout</i>
<b>In the area of Dartford Borough Council and Gravesham Borough Council</b>	
International Way	Realignment of International Way to provide access to proposed car parking areas.
Manor Way	Stopping up of existing highway and amendments to facilitate access for public service vehicles only.
Pilgrims Road	Closure of Pilgrims Road in order to prevent use by vehicular traffic.
<b>In the area of Thurrock Council</b>	
A1089 Ferry Road	Amendments to access road.
'Asda' Roundabout	Junction altered in order to introduce partial signalisation.

## SCHEDULE 5

Article 13

### PERMANENT STOPPING UP OF STREETS, PUBLIC RIGHTS OF WAY AND PRIVATE MEANS OF ACCESS

#### PART 1

#### STREETS TO BE STOPPED UP AND 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 substituted</i>
Dartford Borough Council	International Way at Ebbsfleet International Station	Between points HWST3.1 and HWST3.3; between points HWST3.2 and HWST3.6 including the entirety of both roundabouts; and between points HWST3.4 and HWST3.5 as shown on Sheet 4 of the access, rights of way and public rights of navigation plans.	Highway between points HW2.1 and HW2.2 including two connecting roundabouts as shown on Sheet 4 of the access, rights of way and public rights of navigation plans.
Dartford Borough Council	A2 Junction connection A2260 and National Cycle Network Routes 1 and 177	Between points HWST4.1 and HWST4.2; between points HWST4.2 and HWST4.3; between points HWST4.3 and HWST4.4 including the entirety of both roundabouts; and between points HWST4.5 and HWST4.6 as shown on Sheet 5 of the access, rights of	Highway and cycleway between points HW1.1 and HW1.2; between points HW1.2 and HW1.3; between points HW1.3 and HW1.8 including two connecting roundabouts; between points HW1.4 and HW1.5; between points HW1.5 and HW1.6; between HW1.6 and HW1.7;

way and public rights of navigation plans.

between HW1.7 and HW1.8; and between HW1.9 and HW1.10 as shown on Sheet 5 of the access, rights of way and public rights of navigation plans.

## PART 2

### STREETS TO BE STOPPED UP AND FOR WHICH NO 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>
Dartford Borough Council	Manor Way	Between points HWST1.1 and HWST1.6 including connecting roundabouts as shown on Sheet 2 of the access, rights of way and public rights of navigation plans.
Dartford Borough Council	Northfleet Industrial Estate	Between points HWST2.1 and HWST2.6; between points HWST2.2 and HWST2.3; and between points HWST2.4 and HWST2.5 as shown on Sheet 2 of the access, rights of way and public rights of navigation plans.

## PART 3

### PUBLIC RIGHTS OF WAY TO BE STOPPED UP AND FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public right of way to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New public right of way to be substituted</i>
Dartford Borough Council	DS12	Between points ST2.1 and ST2.4 as shown on Sheet 2 of the access, rights of way and public rights of navigation plans.	Footpath between points ROW2.1 and ROW2.2 as shown on Sheet 2 of the access, rights of way and public rights of navigation plans.
Dartford Borough Council and Gravesham Borough Council	DS1 and NU1	Between points ST4.1 and ST4.5 as shown on Sheet 1 of the access, rights of way and public rights of navigation plans.	Footpath and cycleway between points ROW1.1 and ROW1.2 as shown on Sheet 1 of the access, rights of way and public rights of navigation plans.

## PART 4

### PUBLIC RIGHTS OF WAY TO BE STOPPED UP AND FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public right of way to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>
Dartford Borough Council	DS30	Public right of way DS30 between points ST1.1 and ST1.2 as shown on Sheet 3 of the access, rights of way and public rights of navigation plans.
Dartford Borough Council	DS2	Public right of way DS2 between points ST3.1 as shown on Sheet 2 and ST3.4 as shown on Sheet 1 of the access, rights of way and public rights of navigation plans.

## PART 5

### PRIVATE MEANS OF ACCESS TO BE STOPPED UP AND FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Private means of access to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New private means of access</i>
Dartford Borough Council and Gravesham Borough Council	Track across Marshes connecting Bell Wharf Jetty and DS1	Private means of access between points PMST7.1 and PMST7.5; between points PMST7.2 and PMST7.3; between points PMST7.4 and PMST7.8; and between points PMST7.7 and PMST7.9 as shown on Sheet 1 of the access, rights of way and public rights of navigation plans.	Vehicular access between points ROW1.1 and ROW1.2 as shown on Sheet 1 of the access, rights of way and public rights of navigation plans.
Gravesham Borough Council	Track connecting Manor Way and NU1	Private means of access between points PMST6.1 and PMST6.2 as shown on Sheet 2 of the access, rights of way and public rights of navigation plans.	Access road connecting Manor Way and NU1 between points PMA3.1 and PMA3.2 as shown on Sheet 2 of the access, rights of way and public rights of navigation plans.

Dartford Borough Council and Gravesham Borough Council	Track across marshes connecting DS1 and High Speed 1 access	Private means of access to be stopped up in its entirety between points PMST5.1 as shown on Sheet 1 and PMST5.3 as shown on Sheet 2; and between points PMST5.2 and PMST5.4 as shown on Sheet 2 of the access, rights of way and public rights of navigation plans.	Vehicular access between points PMA1.9 and PMA1.10 as shown on Sheet 2 of the access, rights of way and public rights of navigation plans.
--	---	---	--

## PART 6

### PRIVATE MEANS OF ACCESS TO BE STOPPED UP AND FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Private means of access to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>
Dartford Borough Council	Track across marshes from Wainwright Avenue to industrial access on Manor Way	Private means of access to be stopped up in its entirety between points PMST1.1 and PMST1.2 as shown on Sheet 3 of the access, rights of way and public rights of navigation plans.
Dartford Borough Council	Industrial access from Manor Way	Private means of access between points PMST2.1 and PMST2.2 as shown on Sheet 3 of the access, rights of way and public rights of navigation plans.
Dartford Borough Council	Access track connection to track from Wainwright Avenue to Manor Way	Private means of access to be stopped up in its entirety between points PMST3.1 and PMST3.2 as shown on Sheet 2 of the access, rights of way and public rights of navigation plans.
Dartford Borough Council	Whitecliff Park	Private means of access to be stopped up in its entirety between points PMST4.1 and PMST4.2 as shown on Sheet 2 of the access, rights of way and public rights of navigation plans.



**PART 7**  
**PUBLIC RIGHTS OF WAY TO BE CREATED**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public right of way to be created</i>	<i>(3)</i> <i>Extent of creation</i>
Dartford Borough Council	Footpath	Between points ROW2.3 and ROW2.4 as shown on Sheet 3 of the access, rights of way and public rights of navigation plans.
Dartford Borough Council	Footpath and cycleway	Between points ROW3.1 as shown on Sheet 2 and ROW3.2 as shown on Sheet 4 of the access, rights of way and public rights of navigation plans.

**PART 8**  
**PRIVATE MEANS OF ACCESS TO BE CREATED**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Private means of access to be created</i>	<i>(3)</i> <i>Extent of creation</i>
Dartford Borough Council	Vehicular access	South from PMA1.1 then to PMA1.2 and PMA1.3 as shown on Sheet 4 of the access, rights of way and public rights of navigation plans.
Dartford Borough Council	Vehicular access	North-west from PMA1.5 then to PMA2.3, PMA1.4 and PMA1.6 as shown on Sheet 2, and to PMA1.7 north-west to PMA1.8 and PMA1.6, and between PMA1.7 and PMA1.8 as shown on Sheet 1, of the access, rights of way and public rights of navigation plans.
Dartford Borough Council	Vehicular access	From PMA2.3 to PMA2.2 anti-clockwise back to PMA2.2, with accesses at PMA2.1 and PMA2.4 as shown on Sheet 2 of the access, rights of way and public rights of navigation plans.

## SCHEDULE 6

Article 14

### STREETS OR RIGHTS OF ACCESS TO BE TEMPORARILY CLOSED, ALTERED, DIVERTED OR RESTRICTED FOR WHICH A DIVERSION IS TO BE PROVIDED

<i>(1)</i> Area	<i>(2)</i> Street or right of access to be temporarily closed, altered, diverted or restricted	<i>(3)</i> Extent of temporary closure, alteration, diversion or restriction	<i>(4)</i> Temporary diversion
Dartford Borough Council	DS1	Temporary closure between points TST1.1 and TST1.2 shown on Sheet 3 of the access, rights of way and public rights of navigation plans.	Between points DV1.1 and DV1.2 as shown on Sheet 3 of the access, rights of way and public rights of navigation plans.

## SCHEDULE 7

Article 24

### LAND IN WHICH NEW RIGHTS MAY BE ACQUIRED

<i>(1)</i> Plot number of land shown on land plans	<i>(2)</i> Purpose for which rights over land may be acquired
<b>Land Plans - Sheet 1</b>	
3	Operation and maintenance of Work No. 14c
26, 40	Operation and maintenance of Works Nos. 14a and 15
37	Operation and maintenance of Work No. 14a
41	Operation and maintenance of Work No. 15
<b>Land Plans - Sheet 2</b>	
61, 62, 64, 65, 67, 67a, 68, 69, 70, 71, 72	Operation and maintenance of Work No. 18b
287, 288, 289, 290	Operation and maintenance of Work No. 24c
<b>Land Plans - Sheet 3</b>	
45	Operation and maintenance of Work No. 19a
46	Operation and maintenance of Works Nos. 9b and 21c
<b>Land Plans - Sheet 4</b>	
294, 295, 296	Operation and maintenance of Work No. 25
299, 300, 302, 304, 305, 312	Operation and maintenance of Work No. 17b
303	Operation and maintenance of Works Nos. 11 and 17b
308	Operation and maintenance of Work No. 29
313, 314, 315	Operation and maintenance of Work No. 11
320, 321	Operation and maintenance of Works Nos. 11 and 28b
326, 327	Operation and maintenance of Work No. 26
328, 329, 334, 335	Operation and maintenance of Work No. 28a
<b>Land Plans - Sheet 5</b>	
332, 341, 342, 343, 344, 345, 356, 357	Operation and maintenance of Work No. 28b

337, 338, 344, 345, 346, 347, 348, 349, 351, 352, 265, 366, 367, 368, 370, 371, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 403, 404	Operation and maintenance of Work No. 4
350, 353, 401, 402, 407, 408 369, 373, 375, 379, 380 376, 377	Operation and maintenance of Works Nos. 4 and 11 Operation and maintenance of Works Nos. 4 and 27b Operation and maintenance of Work No. 27b
<b>Land Plans - Sheet 6</b> 407, 408, 410, 411, 412, 413 409	Operation and maintenance of Work No. 4 Operation and maintenance of Work No. 27a
<b>Land Plans - Sheet 7</b> 414, 415, 416, 417, 418, 419, 420	Operation and maintenance of Work No. 4
<b>Land Plans - Sheet 8</b> 421, 422, 423, 424, 425, 426, 427, 432, 433, 434, 435, 436, 437, 438, 441, 442, 443	Operation and maintenance of Work No. 21b
<b>Land Plans - Sheet 9</b> 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465	Operation and maintenance of Work No. 21a

---

## SCHEDULE 8

Ref

### RESTRICTION OF POWER OF COMPULSORY ACQUISITION OF LAND UNDER THE SURFACE AND AIRSPACE OVER THE LAND

1. In the case of land specified in the following table, the power under article 21 may be exercised only in relation to so much of the subsoil or under-surface of the land as lies more than [ ]m below the level of the surface.

<i>Area</i>	<i>Plot Number on Land Plans</i>

2. In the case of land specified in the following table, the power under article 21 may be exercised only in relation to so much of the airspace over the land.

<i>Area</i>	<i>Plot Number on Land Plans</i>

## MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS AND RESTRICTIVE COVENANTS

### Compensation enactments

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

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

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

- (a) for “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable”.

**3.—(1)** Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

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

“(5A) If—

- (a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 8 to the London Resort Development Consent Order 202[ ];
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 8 to the London Resort Development Consent Order 202[ ]) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,

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

### Application of Part 1 of the 1965 Act

**4.** Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 28 (modification of Part 1 of the 1965 Act)) to the acquisition of land under article 21 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 24 (compulsory acquisition of rights and imposition of restrictive covenants)—

- (a) with the modifications specified in paragraph 5; and
- (b) with such other modifications as may be necessary.

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

---

(a) 1973 c. 26.

(2) References in that the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the context) as referring to, or as including references to—

- (a) the right acquired or to be acquired or the restrictive covenant imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restrictive covenant is or is to be enforceable.

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

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

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

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

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

(5) Section 11(a) (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 21, it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A(b) (powers of entry: further notices of entry), 11B(c) (counter-notice requiring possession to be taken on specified date), 12(d) (penalty for unauthorised entry) and 13(e) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

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

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 28(4) is also modified so as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired or to enforce the restrictive covenant imposed, subject to compliance with that section as respects compensation.

---

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

(b) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.

(c) Section 11B was inserted by section 187(2) of the Housing and Planning Act 2016.

(d) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).

(e) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(f) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

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

## “SCHEDULE 2A COUNTER-NOTICE REQUIRING PURCHASE OF LAND

### **Introduction**

1.—(1) This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 26 (application of the 1981 Act) of the London Resort Development Consent Order 202[ ] in respect of the land to which the notice to treat relates.

(2) But see article 29(4) (acquisition of subsoil and airspace only) of the London Resort Development Consent Order 202[ ] which excludes the acquisition of subsoil or airspace only from this Schedule.

2. In this Schedule, “house” includes any park or garden belonging to a house.

### **Counter-notice requiring purchase of land**

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

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

### **Response to counter-notice**

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

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

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

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

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

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

### **Determination by Upper Tribunal**

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

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

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

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

- (a) the effect of the acquisition of the right or the imposition of the covenant,  
 (b) the proposed use of the right or the imposition of the covenant, and  
 (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

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

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

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

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

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

### **Application of the 2017 Regulations**

**6.** References in Schedule 1 to the 2017 Regulations to land are, in the appropriate contexts, to be read (according to the requirements of the context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or the restrictive covenant imposed or to be imposed;  
 or  
 (b) the land over which the right is to be exercisable, or the restrictive covenant is or is to be enforceable.

## **SCHEDULE 10**

Article 31

### **LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN**

<i>(1)</i> <i>Plot reference number shown</i> <i>on Land Plans</i>	<i>(2)</i> <i>Purpose for which temporary</i> <i>possession may be taken</i>	<i>(3)</i> <i>Relevant part of the</i> <i>authorised development</i>
<b>Land Plans - Sheet 1</b>		
1	Construction of Work No. 19b	Work No. 19b
3	Construction of Work No. 14c	Work No. 14c
6, 16	Construction of Work No. 19c	Work No. 19c
36, 40, 41	Construction of Works Nos. 14a and 15	Works Nos. 14a and 15
37	Construction of Work No. 14a	Work No. 14a
<b>Land Plans - Sheet 2</b>		
67, 67a, 68, 69, 70, 71, 72	Construction of Work No. 18b	Work No. 18b

215, 216, 217	Construction of Works Nos. 3a, 11, 12 and 14b	Works Nos. 3a, 11, 12 and 14b
218, 269, 270, 271, 272, 273, 274	Construction of Works Nos. 10a, 10b and 20	Works Nos. 10a, 10b and 20
245, 246	Construction of Work No. 21c	Work No. 21c
249	Construction of Work No. 20	
280	Construction of Works Nos 11, 14b and 24b	Works Nos. 11, 14b and 24b
287, 288, 289, 290	Construction of Work No. 24c	Work No. 24c
<b>Land Plans - Sheet 3</b>		
45	Construction of Work No. 19a	Work No. 19a
46	Construction of Works Nos. 9b and 21c	Works Nos. 9b and 21c
<b>Land Plans - Sheet 4</b>		
294, 295, 296	Construction of Work No. 25	Work No. 25
299, 300, 302, 304, 305, 312	Construction of Work No. 17b	Work No. 17b
303	Construction of Works Nos. 11 and 17b	Works Nos. 11 and 17b
308	Construction of Work No. 29	Work No. 29
313, 314, 315	Construction of Work No. 11	Work No. 11
320, 321	Construction of Works Nos. 11 and 28b	Works Nos. 11 and 28b
322, 323, 324, 325, 331	Construction of Works Nos. 11 and 26	Works Nos. 11 and 26
326, 327	Construction of Work No. 26	Work No. 26
328, 329, 334, 335	Construction of Work No. 28a	Work No. 28a
<b>Land Plans - Sheet 5</b>		
332, 341, 342, 343, 344, 345, 356, 357	Construction of Work No. 28b	Work No. 28b
337, 338, 344, 345, 346, 347, 348, 349, 351, 352, 265, 366, 367, 368, 370, 371, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 403, 404	Construction of Work No. 4	Work No. 4
350, 353, 401, 402, 407, 408	Construction of Works Nos. 4 and 11	Works Nos. 4 and 11
369, 373, 375, 379, 380	Construction of Works Nos. 4 and 27b	Works Nos. 4 and 27b
376, 377	Construction of Work No. 27b	Work No. 27b
<b>Land Plans - Sheet 6</b>		
407, 408, 410, 411, 412, 413	Construction of Work No. 4	Work No. 4
409	Construction of Work No. 27a	Work No. 27a
<b>Land Plans - Sheet 7</b>		
414, 415, 416, 417, 418, 419, 420	Construction of Work No. 4	Work No. 4
<b>Land Plans - Sheet 8</b>		
421, 422, 423, 424, 425, 426, 427, 432, 433, 434, 435, 436, 437, 438, 441, 442, 443	Construction of Work No. 21b	Work No. 21b
<b>Land Plans - Sheet 9</b>		



**SCHEDULE 11** Articles 33 and 36  
**PROTECTIVE PROVISIONS**

**PART 1**

**FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE  
UNDERTAKERS**

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

**2.** In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

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

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

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

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed;

“utility undertaker” means—

---

(a) 1989 c. 29.  
(b) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by section 76 of the Utilities Act 2000 (c. 27).  
(c) 1991 c. 56.  
(d) Section 102(4) was amended by section 96(1)(c) of the Water Act 2003 (c. 37). Section 104 was amended by sections 96(4) and 101(2) of, and Part 3 of Schedule 9 to, the Water Act 2003 and section 42(3) of the Flood and Water Management Act 2010 (c. 29) and section 11(1) and (2) of, and paragraphs 2 and 91 of Schedule 7 to the Water Act 2014 (c. 21).

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
  - (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986;
  - (c) a water undertaker within the meaning of the Water Industry Act 1991; and
  - (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,
- for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

### **On street apparatus**

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

### **Apparatus in stopped up streets**

4.—(1) Where any street is stopped up under article 13 (permanent stopping up of streets, public rights of way and rights of access), any utility undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the utility undertaker to require the removal of that apparatus under paragraph 7 or the power of the undertaker to carry out works under paragraph 9.

(2) Regardless of the temporary closure, alteration, diversion or restriction of use of any highway under the powers conferred by article 14 (temporary closure, alteration, diversion and restriction of use of streets and rights of access), a utility undertaker is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

### **Protective works to buildings**

5. The undertaker, in the case of the powers conferred by article 19 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

### **Acquisition of land**

6. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

### **Removal of apparatus**

7.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (6).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility

undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed the utility undertaker must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 46, and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that the undertaker desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) If the utility undertaker in question fails either reasonably to approve, or to provide reasons for its failure to approve along with an indication of what would be required to make acceptable, any proposed details relating to required removal works under sub-paragraph (2) within 28 days of receiving a notice of the required works from the undertaker, then such details are deemed to have been approved.

(8) For the avoidance of doubt, any such “deemed consent” under sub-paragraph (7) does not extend to the actual undertaking of the removal works, which remains the sole responsibility of the utility undertaker or its contractors.

### **Facilities and rights for alternative apparatus**

**8.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

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

### **Retained apparatus**

**9.**—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 7(2), the undertaker must submit to the utility undertaker in question a plan of the works to be executed.

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

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

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

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

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances.

### **Expenses and costs**

**10.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker all expenses reasonably incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 7(2).

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

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

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 46 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

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

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

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

**11.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 5 or 7(2), or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the undertaker,
- (c) by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by a utility undertaker on behalf of the undertaker or in accordance with a plan approved by a utility undertaker or in accordance with any requirement of a utility undertaker or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless the utility undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and professional like manner or in a manner that does not accord with the approved plan.

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

(4) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

## **Cooperation**

**12.** Where in consequence of the proposed construction of any part of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 7(2) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the utility undertaker's undertaking and each utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

**13.** Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## **PART 2**

### **FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS**

**1.** For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

**2.** In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(b);

“electronic communications code network” means—

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

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

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

“operator” means the operator of an electronic communications code network.

**3.** The exercise of the powers conferred by article 33 (statutory undertakers) is subject to Part 10 (undertaker’s works affecting electronic communications apparatus) to the electronic communications code.

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

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other reasonable expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

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

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

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 46 (arbitration).

(5) This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damages, or any interruptions, caused by electro-magnetic interference arising from the construction or use of the authorised development.

---

(a) 2003 c. 21.

(b) See section 106. Section 106 was amended by section 4(3) to (9) of the Digital Economy Act 2017 (c. 30).

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

## PART 3

### FOR THE PROTECTION OF DRAINAGE AUTHORITIES

1. The provisions of this Part have effect for the protection of the drainage authority unless otherwise agreed in writing between the undertaker and the drainage authority.

2. In this Part of this Schedule—

“construction” includes execution, placing, altering, replacing, relaying and removal; and “construct” and “constructed” must be construed accordingly;

“drainage authority” means in relation to an ordinary watercourse, the drainage board concerned within the meaning of section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991(a);

“drainage work” means any ordinary watercourse and includes any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence in connection with an ordinary watercourse which is the responsibility of the drainage authority;

“ordinary watercourse” has the meaning given by section 72 (interpretation) of the Land Drainage Act 1991;

“plans” includes any information reasonably required by the drainage authority including location details, grid references, sections, drawings, specifications, assessments and method statements;

“specified work” means any of the following works carried out in relation to any ordinary watercourse—

- (a) erecting any mill dam, weir or other similar obstruction to the flow of the watercourse, or raising or otherwise altering any such obstruction;
- (b) the construction or alteration of a bridge or other structure;
- (c) erecting a culvert in the watercourse; or
- (d) altering a culvert in a manner that would be likely to affect the flow of the watercourse.

3.—(1) Before commencing construction of a specified work, the undertaker must submit to the drainage authority plans of the specified work and such further particulars available to it as the drainage authority may within 14 days of the submission of the plans reasonably request.

(2) The undertaker must not commence construction of the specified work until approval, unconditionally or conditionally, has been given as provided in this paragraph.

(3) A specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority or determined under paragraph 28.

(4) Any approval of the drainage authority required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) is deemed to have been given if it is neither given nor refused within 28 days of the submission of the plans for approval, or submission of further particulars (where required by the drainage authority under sub-paragraph (1)) whichever is the later; and
- (c) may be given subject to such reasonable requirements as the drainage authority may make for the protection of any drainage work, ordinary watercourse or for the prevention of flooding.

(5) Any refusal under this paragraph must be accompanied by a statement of the reasons for refusal.

---

(a) 1991 c. 59.

4. Without limiting paragraph 20, the requirements which the drainage authority may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified work (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage by reason of any specified work; or
- (b) to secure that the efficiency of any drainage work for flood defence and land drainage purposes is not impaired, and that the risk of flooding is not otherwise increased, by reason of any specified work.

5.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the drainage authority under paragraph 21, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part of this Schedule; and
- (b) to the reasonable satisfaction of the drainage authority, and an officer of the drainage authority is entitled to watch and inspect the construction of such works at all reasonable times and on reasonable notice.

(2) The undertaker must give to the drainage authority—

- (a) not less than 14 days' notice in writing of its intention to commence construction of any specified work; and
- (b) notice in writing of its completion not later than 7 days after the date of completion.

(3) If the drainage authority reasonably requires, the undertaker must construct all or part of the protective works so that they are in place before the construction of the specified work to which the protective works relate.

(4) If any part of a specified work or any protective work required by the drainage authority is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the drainage authority may by notice in writing require the undertaker at the undertaker's expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is agreed, to restore the site to its former condition to such extent and within such limits as the drainage authority reasonably requires.

(5) Subject to sub-paragraph (6), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the drainage authority may execute the works specified in the notice and any reasonable expenditure incurred by it in so doing is recoverable from the undertaker.

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the drainage authority must not except in an emergency exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined in accordance with paragraph 28.

6.—(1) Subject to sub-paragraph (5), the undertaker must from the commencement of the construction of the specified work until the date falling 12 months from the date of completion of the specified work maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation on land held by the undertaker for the purpose of or in connection with the specified work, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the drainage authority, the drainage authority may by notice in writing require the undertaker to repair and restore the work, or any part of the work, or (if the undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably



withheld or delayed), to remove the specified work and restore the site to its former condition, to such extent and within such limits as the drainage authority reasonably requires.

(3) Subject to sub-paragraph (4) and paragraphs 25 and 26 if, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the drainage authority may do what is reasonably necessary for such compliance and may recover any reasonable expenditure reasonably incurred by it in so doing from the undertaker.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the drainage authority must not except in a case of emergency exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 28.

(5) This paragraph does not apply to—

- (a) drainage works which are vested in the drainage authority, or which the drainage authority or another person is liable to maintain and is not prevented by this Order from so doing; and
- (b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part of this Schedule provided that any obstruction is removed as soon as reasonably practicable.

7. Subject to paragraphs 25 and 26 and sub-paragraph 23(5)(b), if, by reason of the construction of a specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes or land drainage is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker as soon as reasonably practicable to the reasonable satisfaction of the drainage authority and, if the undertaker fails to do so, the drainage authority may make good the impairment or damage and recover from the undertaker the expense reasonably incurred by it in doing so.

8. The undertaker must make reasonable compensation for costs, charges and expenses which the drainage authority may reasonably incur in—

- (a) the examination or approval of plans under this Part of this Schedule; and
- (b) inspecting the construction of the specified work or any protective works required by the drainage authority under this Part of this Schedule; and
- (c) subject at all times to receiving the prior written approval of the undertaker, in carrying out any surveys or tests by the drainage authority which are reasonably required in connection with the construction of the specified work.

9.—(1) Without limiting the other provisions of this Part, the undertaker must make reasonable compensation to the drainage authority from all claims, demands, proceedings, costs, damages, expenses or loss, which may be made or taken against, recovered from, or incurred by, the drainage authority by reason of—

- (a) any damage to any drainage work;
- (b) any raising or lowering of the water table in land adjoining the authorised project or any sewers, drains and watercourses; or
- (c) any flooding or increased flooding of any such lands,
- (d) caused by the construction of any specified work or any act or omission of the undertaker, its contractors, agents or employees whilst engaged on the specified work.

(2) The drainage authority must give to the undertaker reasonable notice of any such claim or demand, and no settlement or compromise may be made without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

(3) The fact that any act or thing may have been done by the drainage authority on behalf of the undertaker or in accordance with a plan approved or deemed to have been approved by the drainage authority or in accordance with any requirement of the drainage authority or under its supervision

does not, subject to sub-paragraph (4), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless the drainage authority fails to carry out and execute the works properly with due care and attention and in a skilful and professional like manner or in a manner that does not accord with the approved plan.

(4) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or loss to the extent that it is attributable to the act, neglect or default of the drainage authority, its officers, servants, contractors or agents.

(5) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the drainage authority or to its satisfaction does not (in the absence of negligence on the part of the drainage authority, its officers, contractors or agents), relieve the undertaker from any liability under this Part.

(6) Any dispute arising between the undertaker and the drainage authority under this Part is to be determined by arbitration under article 46 (arbitration).

## PART 4

### FOR THE PROTECTION OF RAILWAY INTERESTS

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

2. In this Part of this Schedule—

“asset protection agreement” means an agreement to regulate the construction and maintenance of the specified work in a form prescribed from time to time by Network Rail;

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

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

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

“Network Rail” means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at 1 Eversholt Street, London NW1 2DN) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited and any successor to Network Rail Infrastructure Limited’s railway undertaking;

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

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

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

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

“regulatory consents” means any consent or approval required under:

- (c) the Railways Act 1993;

(d) the network licence; and/or

(e) any other relevant statutory or regulatory provisions,

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approvals of any access or beneficiary that may be required in relation to the authorised development;

“specified work” means so much of any of the authorised development as is situated upon, across, under, over or within [TBC metres] of, or may in any way adversely affect, railway property and, for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 4 (*maintenance of authorised development*) in respect of such works.

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

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

(a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and

(b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

**4.—**(1) The undertaker must not exercise the powers conferred by—

(a) article 3 (*development consent granted by the Order*);

(b) article 4 (*maintenance of authorised development*);

(c) article 9 (*planning permission*);

(d) article 13 (*permanent stopping up of streets, rights of way and rights of access*);

(e) article 14 (*temporary closure, alteration, diversion and restriction of use of streets and rights of access*);

(f) article 15 (*access to and from works*);

(g) article 16 (*agreements with street authorities*) insofar as it relates to a street over or under a railway);

(h) article 18 (*discharge of water*);

(i) article 20 (*authority to survey and investigate the land*);

(j) article 21 (*compulsory acquisition of land*);

(k) article 22 (*power to override easements and other rights*);

(l) article 24 (*compulsory acquisition of rights and imposition of restrictive covenants*);

(m) article 29 (*acquisition of airspace or subsoil only*);

(n) article 31 (*temporary use of land for carrying out the authorised development*);

(o) article 32 (*temporary use of land for maintaining the authorised development*);

(p) article 33 (*statutory undertakers*);

(q) article 25 (*private rights over land*);

(r) article 40 (*felling or lopping of trees or shrubs*);

(s) article 41 (*trees subject to tree preservation orders*);

(t) article 50 (*byelaws*);

(u) the powers conferred by section 11(3) (*power of entry*) of the 1965 Act;

- (v) the powers conferred by section 203 (*power to override easements and rights*) of the Housing and Planning Act 2016;
- (w) the powers conferred by section 172 (*right to enter and survey land*) of the Housing and Planning Act 2016;
- (x) any powers under in respect of the temporary possession of land under the Neighbourhood Planning Act 2017,

in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

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

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article 22 (*power to override easements and other rights*) or article 33 (*statutory undertakers*), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property, except with the consent of Network Rail.

(5) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.

(6) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions but it shall never be unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion).

(7) The undertaker must enter into an asset protection agreement prior to the [carrying out] of any specified work.

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

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

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying their approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the

services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to their reasonable satisfaction.

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

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

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

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

**7.—**(1) The undertaker must—

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

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

**9.—**(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction or completion of a specified work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances) of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and

the undertaker must, notwithstanding any such approval of a specified work under paragraph 5(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

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

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

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

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

**11.**—(1) In this paragraph—

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

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

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

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

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

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 29(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;

- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

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

(6) Prior to the commencement of operation of the authorised development the undertaker shall test the use of the authorised development in a manner that shall first have been agreed with Network Rail and if, notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI;
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI; and
- (d) the undertaker shall not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph to prevent EMI occurring.

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

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 6.

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

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

(11) In relation to any dispute arising under this paragraph the provisions of article 46 (Arbitration) shall not apply and any such dispute, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) to the President of the Institution of Engineering and Technology.

**12.** If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any

part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

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

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

**15.—(1)** The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (subject to article 53 (*no double recovery*)) which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction, maintenance or operation of a specified work or the failure thereof; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;
- (c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development;
- (d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others;
- (e) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development,

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

(2) Network Rail must—

- (a) give the undertaker reasonable written notice of any such claims or demands
- (b) not make any settlement or compromise of such a claim or demand without the prior consent of the undertaker; and
- (c) take such steps as are within its control and are reasonable in the circumstances to mitigate any liabilities relating to such claims or demands.

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

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



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

(6) In this paragraph—

“the relevant costs” means the costs, losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including but not limited to any restriction of the use of Network Rail’s railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in subparagraph (1); and

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

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

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

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

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

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

**20.** The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State’s consent, under article 7 (*transfer of benefit of Order*) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

**21.** The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 44 (*certification of plans etc.*) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.

**22.** In relation to any dispute arising under this part of this Part of this Schedule (except for those disputes referred to in paragraph 11 the provisions of article 46 (*Arbitration*) shall not apply and any such dispute, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) to the President of the Institution of Civil Engineers.

## PART 5

### FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER

#### Application

1.—(1) For the protection of National Grid as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article [ ] (consent to transfer benefit of Order)—

- (a) any agreement of the type mentioned in subparagraph (1) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to National Grid on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid (but without prejudice to 11(3)b).

#### Interpretation

2. In this Part of this Schedule—

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

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than: (i) “A-” if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings; and “A3” if the rating is assigned by Moody’s Investors Services Inc.;

“acceptable insurance” means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than [£50,000,000.00 (fifty million pounds)] per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained (a) during the construction period of the authorised works; and (b) after the construction period of the authorised works in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an “acceptable credit provider”, such insurance shall include (without limitation)—

- (a) a waiver of subrogation and an indemnity to principal clause in favour of the National Grid
- (b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;

“acceptable security” means either—

- (a) a parent company guarantee from a parent company in favour of National Grid to cover the undertaker’s liability to National Grid to a total liability cap of [£50,000,000.00 (fifty million pounds)] (in a form reasonably satisfactory to National Grid and where required by National Grid, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or
- (b) a bank bond or letter of credit from an acceptable credit provider in favour of National Grid to cover the undertaker’s liability to National Grid for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of [£50,000,000.00 (fifty million pounds)] (in a form reasonably satisfactory to National Grid);

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article [2(1)] of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” and “commencement” in this Part of this Schedule shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Grid’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

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

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid: construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid” means National Grid Electricity Transmission Plc (Company Number 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“parent company” means a parent company of the undertaker acceptable to and which shall have been approved by National Grid acting reasonably;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which:

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and/or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and/or
- (c) includes any of the activities that are referred to in development near overhead lines EN43-8 and HSE’s guidance note 6 “Avoidance of Danger from Overhead Lines”.

“undertaker” means the undertaker as defined in article 2(1) of this Order;

## **On Street Apparatus**

3. Except for paragraphs 4 (*apparatus in stopped up streets*), 9 (*retained apparatus: protection*), 10 (*expenses*) and 11 (*indemnity*) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

### **Apparatus of National Grid in stopped up streets**

4.—(1) Where any street is stopped up under article [ ] [*permanent stopping up, restriction of use and construction of streets, public rights of way and private means of access*], if National Grid has any apparatus in the street or accessed via that street National Grid has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Grid, or procure the granting to National Grid of, legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph affects any right of the undertaker or National Grid to require the removal of that apparatus under paragraph 7 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 9.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article [ ] [*temporary stopping up and restriction of use of streets*], National Grid is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

### **Protective works to buildings**

5. The undertaker, in the case of the powers conferred by article [ ] [*protective work to buildings*], must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid.

### **Acquisition of land**

6. Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not acquire any apparatus or override any easement or other interest of National Grid otherwise than by agreement.

### **Removal of apparatus**

7.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to National Grid to its satisfaction (taking into account paragraph 8(1) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and

(b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

### **Facilities and rights for alternative apparatus**

**8.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 15 (*Arbitration*) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus: protection**

**9.**—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;
- (f) written details of the operations and maintenance regime for any cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers; and
- (h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to and including 26 tonnes in weight.

(4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraphs (4)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and,
- (b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and National Grid shall give notice its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice

as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (11) at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

## **Expenses**

**10.—**(1) Save where otherwise agreed in writing between National Grid and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses reasonably and properly incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid—
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 7(3); or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

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

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 15 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

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

(5) Any amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid 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.

### **Indemnity**

**11.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from National Grid the cost reasonably and properly incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party other than arising from any default of National Grid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents;
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 8 (*consent to transfer benefit of Order*) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this subsection 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 11; and/or
- (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable;



(4) National Grid must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) National Grid must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Grid must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Grid's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid's control and if reasonably requested to do so by the undertaker National Grid must provide an explanation of how the claim has been minimised, where relevant.

(7) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Grid or in respect of which National Grid has an easement or wayleave for its apparatus or any other interest or to carry out any works within [15] metres of National Grid's apparatus until the following conditions are satisfied—

- (a) unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid has confirmed the same to the undertaker in writing; and
- (b) unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Grid that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid has confirmed the same in writing to the undertaker.

### **Enactments and agreements**

12. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### **Co-operation**

13.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 7(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

### **Access**

14. If in consequence of the agreement reached in accordance with paragraph 6(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must

provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

15. Save for differences or disputes arising under paragraph 7(2), 7(4) 8(1) and 9 any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article [ ] (*arbitration*).

### **Notices**

16. Notwithstanding article [ ] (*service of notices*), any plans submitted to National Grid by the undertaker pursuant to paragraph 9 must be sent to Plant Protection at [plantprotection@cadentgas.com](mailto:plantprotection@cadentgas.com) or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

## **PART 6**

### **FOR THE PROTECTION OF SOUTHERN GAS NETWORKS PLC AS GAS UNDERTAKER**

### **Application**

1. For the protection of SGN the following provisions will, unless otherwise agreed in writing between the undertaker and SGN, have effect.

### **Interpretation**

2. In this Part of this Schedule—

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

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than: (i) “A-” if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings; and “A3” if the rating is assigned by Moody’s Investors Services Inc.;

“acceptable insurance” means a third party liability insurance effected and maintained by the undertaker to a level of not less than £50,000,000 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained for the construction period of the authorised works which constitute specified works and arranged with an internationally recognised insurer of repute operating in the London and worldwide insurance market underwriters whose security/credit rating meets the same requirements as an “acceptable credit provider”, such policy shall include (but without limitation)—

- (a) SGN as a Co-Insured;
- (b) a cross liabilities clause; and
- (c) contractors’ pollution liability for third party property damage and third party bodily damage arising from a pollution/contamination event with cover of £10,000,000.00 (ten million pounds) per event or £20,000,000.00 (twenty million pounds) in aggregate;

“acceptable security” means either—

- (a) a parent company guarantee from a parent company in favour of SGN to cover the undertaker’s liability to SGN to a cap of not less than £50,000,000 (fifty million pounds) per asset per event up to a total liability cap of £50,000,000 (fifty million pounds) (in a form reasonably satisfactory to SGN and where required by SGN, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or

- (b) a bank bond or letter of credit from an acceptable credit provider in favour of SGN to cover the undertaker's liability to SGN for an amount of not less than £50,000,000 (fifty million pounds) per asset per event up to a total liability cap of £50,000,000 (fifty million pounds) (in a form reasonably satisfactory to SGN);

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of SGN to enable SGN to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by SGN for the purposes of gas distribution together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of SGN for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2 of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” has the same meaning as in article 2 and commencement shall be construed to have the same meaning save that for the purposes of this Part of the Schedule the terms commence and commencement include the pre-commencement works;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by SGN (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for SGN's approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

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

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of SGN including retain, lay, construct, inspect, maintain, protect, use, access, enlarge, replace, renew, remove, decommission or render unusable or remove the apparatus;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“parent company” means a parent company of the undertaker acceptable to SGN and which shall have been approved by SGN acting reasonably;

“rights” shall include rights and restrictive covenants, and in relation to decommissioned apparatus the surrender of rights, release of liabilities and transfer of decommissioned apparatus;

“SGN” means Southern Gas Networks plc or its successors in title or successor bodies and/or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986.

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which:

- (c) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under sub-paragraph 7(2) or otherwise; and/or

- (d) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 7(2) or otherwise;

“undertaker” means the undertaker as defined in article 2 of this Order.

### **On Street Apparatus**

3.—(1) Except for paragraphs 4 (apparatus in stopped up streets), 7 (Removal of Apparatus) in so far as sub-paragraph 3(2) applies, 8 (Facilities and Rights for Alternative Apparatus) in so far as sub-paragraph 3(2) below applies, 9 (retained apparatus: protection), 10 (expenses) and 11 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of SGN, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and SGN are regulated by the provisions of Part 3 of the 1991 Act.

(2) Paragraph 7 and 8 of this Agreement shall apply to diversions even where carried out under the 1991 Act, in circumstances where any Apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within existing adopted public highway.

(3) Notwithstanding articles 11, 12, 30 and 35 or any other powers in the Order generally, s85 of the 1991 Act in relation to cost sharing and the regulations made thereunder shall not apply in relation to any diversion of apparatus of SGN under the 1991 Act.

### **Apparatus of SGN in stopped up streets**

4.—(1) Without prejudice to the generality of any other protection afforded to SGN elsewhere in the Order, where any street is stopped up under article 14 (Permanent stopping up of streets) if SGN has any apparatus in the street or accessed via that street SGN will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to SGN, or will procure the granting to SGN of, legal easements reasonably satisfactory to SGN in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph shall affect any right of the Undertaker or of SGN to require the removal of that apparatus under paragraph 7

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 13 (Temporary prohibition or restriction of use of streets and public rights of way), SGN will be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as it would have been entitled to do immediately before such temporary stopping up or diversion in respect of any apparatus which at the time of the stopping up or diversion was in that highway.

### **Protective works to buildings**

5.—(1) The undertaker, in the case of the powers conferred by article 20 (*protective works to buildings*), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of SGN and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of SGN or any interruption in the supply of gas by SGN, as the case may be, is caused, the undertaker must bear and pay on demand the cost reasonably incurred by SGN in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

- (a) pay compensation to SGN for any loss sustained by it; and
- (b) indemnify SGN against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by SGN, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of SGN or its contractors or workmen; and SGN will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made by

SGN, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

### **Acquisition of land**

6. Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire any apparatus or override any easement or other interest of SGN otherwise than by agreement.

### **Removal of apparatus**

7.—(1) If, in the exercise of the agreement reached in accordance with paragraph 6 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed under this Part of this Schedule and any right of SGN to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, is in operation, and the rights and facilities referred to in sub-paragraph (2) have been provided, to the reasonable satisfaction of SGN and in accordance with sub-paragraph (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to SGN advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order SGN reasonably needs to move or remove any of its apparatus) the undertaker must afford to SGN to its satisfaction (taking into account sub-paragraph 8(1) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the apparatus);
- (b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the apparatus); and
- (c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the apparatus).

(3) If the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, SGN may, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between SGN and the undertaker.

(5) SGN must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to SGN of such facilities and rights as are referred to in sub-paragraph (2) or (3) have been afforded to SGN to its satisfaction, then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

### **Facilities and rights for alternative apparatus**

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for SGN facilities and rights in land for the access to, construction and maintenance alternative apparatus in substitution for apparatus to be decommissioned or removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between

the undertaker and SGN and must be no less favourable on the whole to SGN than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by SGN.

(2) If the facilities and rights to be afforded by the undertaker and agreed with SGN under sub-paragraph 8(1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to SGN than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed (in SGN's opinion) then the terms and conditions to which those facilities and rights are subject in the matter will be referred to arbitration in accordance with paragraph 15 (Arbitration) of this Part of this Schedule and the arbitrator shall make such provision for the payment of compensation by the undertaker to SGN as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus: protection of SGN**

**9.**—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to SGN a plan and, if reasonably required by SGN, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to SGN under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraphs 1 and (2) apply until SGN has given written approval of the plan so submitted.

(4) Any approval of SGN required under sub-paragraph (3)-

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and,
- (b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, SGN may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) and (2) or as relevant sub-paragraph (4), as approved or as amended from time to time by agreement between the undertaker and SGN and in accordance with all conditions imposed under sub-paragraph (4)(a), and SGN will be entitled to watch and inspect the execution of those works.

(7) Where SGN requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to SGN's satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required prior to commencement.

(8) If SGN, in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under sub-paragraph 7(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to SGN notice as soon as is reasonably practicable and a plan of those works and must comply with—

- (a) the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances; and
- (b) sub-paragraph (11) at all times.

(11) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that SGN retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 10.

## **Expenses**

**10.**—(1) Subject to the following provisions of this paragraph, the undertaker must pay to SGN on demand all charges, costs and expenses reasonably and properly incurred by SGN in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or rights or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by SGN in connection with the negotiation or acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by SGN as a consequence of SGN—
  - (i) using its own compulsory purchase powers to acquire any necessary rights under sub-paragraph 7(3) if it elects to do so; and/or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting SGN;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule;
- (g) any watching brief pursuant to sub-paragraph 9(6).

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

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

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 58 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to SGN by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible or appropriate in the circumstances (including due to statutory or regulatory changes) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

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

### **Indemnity**

**11.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of SGN, or there is any interruption in any service provided, or in the supply of any goods, by SGN, or SGN becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand the cost reasonably incurred by SGN in making good such damage or restoring the supply; and
- (b) indemnify SGN for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from SGN, by reason or in consequence of any such damage or interruption or SGN becoming liable to any third party as aforesaid other than arising from any default of SGN.

(2) The fact that any act or thing may have been done by SGN on behalf of the undertaker or in accordance with a plan approved by SGN or in accordance with any requirement of SGN or under its supervision including under any watching brief will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless SGN fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of SGN, its officers, servants, contractors or agents; and
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by SGN as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 9 (Consent to transfer benefit of order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-



section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 11.

(4) The undertaker must not commence construction (and must not permit the commencement of such construction) of the authorised works on any land owned by SGN or in respect of which SGN has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres in any direction of SGN's apparatus until the following conditions are satisfied—

- (a) unless and until SGN is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and SGN has confirmed the same to the undertaker in writing; and
- (b) unless and until SGN is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to SGN that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and SGN has confirmed the same in writing to the undertaker.

(5) SGN must give the undertaker reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the promoter and considering their representations.

### **Enactments and agreements**

12. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between SGN and the undertaker, nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and SGN in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### **Co-operation**

13.—(1) Where in consequence of the proposed construction of any of the authorised works, the undertaker or SGN requires the removal of apparatus under sub-paragraph 7(2) or SGN makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of SGN's undertaking and SGN must co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever SGN's consent, agreement or approval is required in relation to plans, documents or other information submitted by SGN or the taking of action by SGN, it must not be unreasonably withheld or delayed.

### **Access**

14. If in consequence of the agreement reached in accordance with sub-paragraph 6(1) or the powers granted under this Order the access to any apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the apparatus) is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable SGN to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

15. Save for differences or disputes arising under sub-paragraphs 7(2), 7(4), 8(1), 11(5) and paragraph 9 any difference or dispute arising between the undertaker and SGN under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and SGN, be

determined by arbitration in accordance with article 42 (Procedures in relation to certain approvals etc.).

### Notices

16. The plans submitted to SGN by the undertaker pursuant to sub-paragraph 9(1) must be sent to SGN at 1 Forbury Place, 43 Forbury Road, Reading, Berkshire RG1 3JH or such other address as SGN may from time to time appoint instead for that purpose and notify to the undertaker.

## PART 7

### FOR THE PROTECTION OF NATIONAL HIGHWAYS LIMITED

#### Application etc.,

1.—(1) The provisions of this Part of this Schedule apply for the protection of National Highways and have effect unless otherwise agreed in writing between the undertaker and National Highways.

(2) Nothing in this Order affects or prejudices the operation of the powers and duties of National Highways or the Secretary of State under the 1980 Act, the 1984 Act, the 1991 Act, the Transport Act 2000, or Town and Country Planning (General Permitted Development) (England) Order 2015.

#### Interpretation

2.—(1) Where the terms defined in article 2 (*interpretation*) of this Order are inconsistent with subparagraph (2) the latter prevail.

(2) In this Part of this Schedule—

“administration fee” means the fee payable pursuant to the provisions of this Part of this Schedule that represent the internal costs of National Highways in administering the implementation of the specified work and charged as a flat fee;

“as built information” means one electronic copy of the following information—

- (a) as constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the undertaker; in compliance with Interim Advice Note 184 or any successor document;
- (b) list of suppliers and materials used, as well as any relevant test results and CCTV surveys (if required to comply with DMRB standards);
- (c) product data sheets and technical specifications for all materials used;
- (d) as constructed information for any utilities discovered or moved during the works;
- (e) method statements for the works carried out;
- (f) in relation to road lighting, signs, and traffic signals any information required by Series 1300 and 1400 of the Specification for Highway Works or any replacement or modification of it;
- (g) organisation and methods manuals for all products used;
- (h) as constructed programme;
- (i) test results and records as required by the detailed design information and during construction phase of the project;
- (j) a stage 3 road safety audit subject to any exceptions to the road safety audit standard as agreed by the undertaker and National Highways;
- (k) the health and safety file; and
- (l) such other information as is required by National Highways to be used to update all relevant databases and to ensure compliance with National Highway’s *Asset Data Management Manual* as is in operation at the relevant time.

“the bond sum” means the sum equal to 200% of the cost of the carrying out the specified works (to include all costs plus any commuted sum) or such other sum agreed between the undertaker and National Highways;

“the cash surety” means the sum agreed between the undertaker and National Highways;

“commuted sum” means such sum calculated as provided for in paragraph 9 of this Part of this Schedule to be used to fund the future cost of maintaining the specified works;

“condition survey” means a survey of the condition of National Highways structures and assets within the Order limits that may be affected by the specified works;

“contractor” means any contractor or subcontractor appointed by the undertaker to carry out the specified works;

“defects period” means the period from the date of the provisional certificate to the date of the final certificate which shall be no less than 12 months from the date of the provisional certificate;

“detailed design information” means such of the following drawings specifications and calculations as are relevant to the development—

- (a) site clearance details;
- (b) boundary, environmental and mitigation fencing;
- (c) road restraints systems and supporting road restraint risk appraisal process assessment;
- (d) drainage and ducting as required by DMRB CD 535 Drainage asset data and risk management and DMRB CS551 Drainage surveys - standards for Highways
- (e) earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification;
- (f) pavement, pavement foundations, kerbs, footways and paved areas;
- (g) traffic signs and road markings;
- (h) traffic signal equipment and associated signal phasing and timing detail;
- (i) road lighting (including columns and brackets);
- (j) regime of California Bearing Ratio testing;
- (k) electrical work for road lighting, traffic signs and signals;
- (l) motorway communications as required by DMRB;
- (m) highway structures and any required structural approval in principle;
- (n) landscaping;
- (o) proposed departures from DMRB standards;
- (p) walking, cycling and horse riding assessment and review report;
- (q) stage 1 and stage 2 road safety audits and exceptions agreed;
- (r) utilities diversions;
- (s) topographical survey;
- (t) maintenance and repair strategy in accordance with DMRB GD304 Designing health and safety into maintenance or any replacement or modification of it;
- (u) health and safety information including any asbestos survey required by GG105 or any successor document; and
- (v) other such information that may be required by National Highways to be used to inform the detailed design of the specified works,

“DMRB” means the Design Manual for Roads and Bridges or any replacement or modification of it;

“final certificate” means the certificate relating to those aspects of the specified works that have resulted in any alteration to the trunk road to be issued by National Highways pursuant to paragraph 9;

“the health and safety file” means the file or other permanent record containing the relevant health and safety information for the authorised development required by the Construction Design and Management Regulations 2015 (or such updated or revised regulations as may come into force from time to time);

“initial deposit” means the sum calculated by National Highways (acting reasonably) payable to National Highways to cover all initial stages of work until such time as the cost of the specified work and the NH costs payable under paragraph 6 of this Part can be estimated;

“nominated persons” means the undertaker’s representatives or the contractor’s representatives on site during the carrying out of the specified works as notified to National Highways from time to time;

“programme of works” means a document setting out the sequence and timetabling of the specified works;

“provisional certificate” means the certificate of provisional completion relating to those aspects of the specified works that have resulted in any alteration to the trunk road to be issued by National Highways in accordance with paragraph 7 when it considers the specified works are substantially complete and may be opened for traffic;

“road safety audit” means an audit carried out in accordance with the road safety audit standard;

“road safety audit standard” means DMRB Standard HD GG119 or any replacement or modification of it;

“road space booking” means road space bookings in accordance with National Highways’ Asset Management Operational Requirements (AMOR) including Network Occupancy Management System (NOMS) used to manage road space bookings and network occupancy;

“Specification for Highways Works” means the specification for highways works forming part of the manual of contract documents for highway works published by National Highways and setting out the requirements and approvals procedures for work, goods or materials used in the construction, improvement or maintenance of the strategic road network;

“specified works” means so much of any work, including highway works and signalisation, authorised by this Order including any maintenance of that work, as is on, in, under or over the strategic road for which National Highways is the highway authority including and includes the works listed at Article [16(1)(a)-(g)] of this Order and includes Work Nos. [4, 11, 21a, 21b, 21c, 26];

“strategic road network” means any part of the road network including trunk roads, special roads or streets for which National Highways is the highway authority;

“utilities” means any pipes wires cables or equipment belonging to any person or body having power or consent to undertake street works under the New Roads and Street Works Act 1991; and

“winter maintenance” means maintenance of the road surface to deal with snow and ice.

(3) References to any standards, manuals, contracts, Regulations and Directives including to specific standards forming part of the DMRB are, for the purposes of this Part of this Schedule, to be construed as a reference to the same as amended, substituted or replaced, and with such modifications as are required in those circumstances.

### **Works outside the Order limits**

**3.** In the event that the undertaker proposes the carrying out of works to the strategic road network that are outside of the Order Limits in connection with the authorised development, the undertaker must enter into an agreement with National Highways in respect of the carrying out of those works prior to the commencement of those works.

### **Prior approvals and security**

**4.—(1)** The specified works must not commence until—

- (a) a stage 1 and stage 2 road safety audit has been carried out and all recommendations raised by them or any exceptions are approved by National Highways;
  - (b) the programme of works has been approved by National Highways;
  - (c) the detailed design of the specified works comprising of the following details, insofar as considered relevant by National Highways, has been submitted to and approved by National Highways—
    - (i) the detailed design information, incorporating all recommendations and any exceptions approved by National Highways under sub-paragraph (a)
    - (ii) details of the proposed road space bookings;
    - (iii) the identity and suitability of the contractor and nominated persons;
    - (iv) a process for stakeholder liaison, with key stakeholders to be identified and agreed between National Highways and the undertaker;
    - (v) information demonstrating that the walking, cycling and horse riding assessment and review process undertaken by the undertaker in relation to the specified works has been adhered to in accordance with DMRB GG142 - Designing for walking, cycling and horse riding; and
    - (vi) details of how the undertaker has complied with paragraph 18 of this Part of this Schedule in connection with the specified works including how the undertaker has used reasonable endeavours to avoid any conflict arising between the carrying out, maintenance and operation of the specified works and the Lower Thames Crossing.
  - (d) a scheme of traffic management has been submitted by the undertaker and approved by National Highways such scheme to be capable of amendment by agreement between the undertaker and National Highways from time to time;
  - (e) stakeholder liaison has taken place in accordance with the process for such liaison agreed between the undertaker and National Highways under sub-paragraph (c)(v) above;
  - (f) National Highways has approved the audit brief and CVs for all road safety audits and exceptions to items raised in accordance with the road safety audit standard;
  - (g) the undertaker has agreed the estimate of the commuted sum with National Highways;
  - (h) the scope of all maintenance operations (routine inspections, incident management, reactive and third party damage) to be carried out by the undertaker during the construction of the specified works (which must include winter maintenance) has been agreed in writing by National Highways;
  - (i) the undertaker has procured to National Highways collateral warranties in a form approved by National Highways from the contractor and designer of the specified works in favour of National Highways to include covenants requiring the contractor and designer to exercise all reasonable skill care and diligence in designing and constructing the specified works, including in the selection of materials, goods, equipment and plant; and
  - (j) a condition survey and regime of monitoring of any National Highways assets or structures that National Highways considers will be affected by the specified works, has been agreed in writing by National Highways.
- (2) Except where an approval has been provided under paragraph (1), the undertaker must not exercise—
- (a) article 4 (*maintenance of authorised development*);
  - (b) article 13 (*permanent stopping up of streets, rights of way and rights of access*);
  - (c) article 17 (*traffic regulation*);
  - (d) article 18 (*discharge of water*);
  - (e) article 19 (*protective works to buildings*);
  - (f) article 20 (*authority to survey and investigate the land*);
  - (g) article 31 (*temporary use of land for carrying out the authorised development*);

- (h) article 32 (*temporary use of land for maintaining the authorised development*); or
- (i) article 40 (*felling or lopping trees*) of this Order,

over any part of the strategic road network without the consent of National Highways, and National Highways may in connection with any such exercise require the undertaker to provide details of any proposed road space bookings and/or submit a scheme of traffic management for National Highways' approval.

(3) National Highways must prior to the commencement of the specified works or the exercise of any power referenced in sub-paragraph (2) inform the undertaker of the identity of the person who will act as a point of contact on behalf of National Highways for consideration of the information required under sub-paragraph (1) or (2).

(4) Any approval of National Highways required under this paragraph—

- (a) must not be unreasonably withheld;
- (b) must be given in writing;
- (c) shall be deemed to have been refused if neither given nor refused within 2 months of the receipt of the information for approval or, where further particulars are requested by National Highways within 2 months of receipt of the information to which the request for further particulars relates; and

may be subject to any reasonable conditions as National Highways considers necessary..

### **Construction of the specified works**

**5.**—(1) The undertaker must give National Highways 28 days' notice in writing of the date on which the specified works will start unless otherwise agreed by National Highways.

(2) The undertaker must comply with National Highways' road space booking procedures prior to and during the carrying out the specified works and no specified works for which a road space booking is required shall commence without a road space booking having first been secured.

(3) The specified works must be carried out by the undertaker to the satisfaction of National Highways in accordance with—

- (a) the relevant detailed design information and programme of works approved pursuant to paragraph 4(1) above or as subsequently varied by agreement between the undertaker and National Highways;
- (b) the DMRB, the Manual of Contract Documents for Highway Works, including the Specification for Highway Works, together with all other relevant standards as required by National Highways to include, inter alia; all relevant interim advice notes, the Traffic Signs Manual and the Traffic Signs Regulations and General Directions 2016 save to the extent that exceptions from those standards apply which have been approved by National Highways; and
- (c) all aspects of the Construction (Design and Management) Regulations 2015 or any statutory amendment or variation of the same and in particular the undertaker, as client, must ensure that all client duties (as defined in the said regulations) are undertaken to the satisfaction of National Highways.

(4) The undertaker must permit and must require the contractor to permit at all reasonable times persons authorised by National Highways (whose identity must have been previously notified to the undertaker by National Highways) to gain access to the specified works for the purposes of inspection and supervision of the specified works.

(5) If any part of the specified works is constructed—

- (a) other than in accordance with the requirements of this Part of this Schedule; or
- (b) in a way that causes damage to the highway, highway structure or asset or any other land of National Highways,

National Highways may by notice in writing require the undertaker, at the undertaker's own expense, to comply promptly with the requirements of this Part of this Schedule or remedy any

damage notified to the undertaker under this Part of this Schedule, to the satisfaction of National Highways.

(6) If during the carrying out of the authorised development the undertaker causes damage to the strategic road network then National Highways may by notice in writing require the undertaker, at the its own expense, to remedy the damage.

(7) If within 28 days on which a notice under sub-paragraph (5) or sub-paragraph (6) is served on the undertaker (or in the event of there being, in the opinion of National Highways, a danger to road users, within such lesser period as National Highways may stipulate), the undertaker has failed to take the steps required by that notice, National Highways may carry out the steps required of the undertaker- and may recover any expenditure incurred by it in so doing, such sum to be payable within 30 days of demand.

(8) Nothing in this Part of this Schedule prevents National Highways from carrying out any work or taking any such action as it reasonably believes to be necessary as a result or in connection with of the carrying out or maintenance of the authorised development without prior notice to the undertaker in the event of an emergency or to prevent the occurrence of danger to the public and National Highways may recover any expenditure it reasonably incurs in so doing.

(9) In constructing the specified works, the undertaker must at its own expense divert or protect all utilities and all agreed alterations and reinstatement of highway over existing utilities must be constructed to the satisfaction of National Highways.

(10) During the construction of the specified Works the undertaker must carry out all maintenance (including winter maintenance) in accordance with the scope of maintenance operations agreed by National Highways pursuant to paragraph 4(1)(h) and the undertaker must carry out such maintenance at its own cost.

## **Payments**

**6.—**(1) The undertaker must pay to National Highways a sum equal to the whole of any costs and expenses which National Highways incurs (including costs and expenses for using internal or external staff) in relation to the specified works and in relation to any approvals sought under this Order, or otherwise incurred under this Part, including—

- (a) the checking and approval of the information required under paragraph 4(1);
- (b) the supervision of the specified works;
- (c) the checking and approval of the information required to determine approvals under this Order;
- (d) all costs in relation to the transfer of any land required for the specified works;
- (e) the Administration Fee;
- (f) all legal costs in relation to sub-paragraphs (a), (to (e)); and
- (g) any value added tax which is payable by National Highways in respect of such costs and expenses and for which it cannot obtain reinstatement from HM Revenue and Customs,

together comprising “the NH costs”.

(2) The undertaker must pay to National Highways upon demand and prior to such costs being incurred the total costs that National Highways believe will be properly and necessarily incurred by National Highways in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the authorised development.

(3) National Highways must provide to the undertaker notification of the amount required as the Initial Deposit as soon as reasonably practicable and the undertaker must pay an amount equal to the sum within 28 days of receipt of the notification.

(4) National Highways must provide the undertaker with a schedule showing its estimate of the NH costs, including its estimate of the Administration Fee, prior to the commencement of the specified works and the undertaker must pay to National Highways the estimate of the NH costs

prior to commencing the specified works and in any event prior to National Highways incurring any cost.

(5) If at any time after the payment referred to in sub-paragraph (3) has become payable, National Highways reasonably believes that the NH costs will exceed the estimated NH costs it may give notice to the undertaker of the amount that it believes the NH costs will exceed the estimate of the NH costs (the excess) and the undertaker must pay to National Highways within 28 days of the date of the notice a sum equal to the excess.

(6) National Highways must give the undertaker a final account of the costs referred to in sub paragraph (1) above within 91 days of the issue of the provisional certificate issued pursuant to paragraph 7(4).

(7) Within 28 days of the issue of the final account—

- (a) if the final account shows a further sum as due to National Highways the undertaker must pay to National Highways the sum shown due to it;
- (b) if the account shows that the payment or payments previously made by the undertaker have exceeded the costs incurred by National Highways, National Highways must refund the difference to the undertaker.

(8) If any payment due under any of the provisions of this Part of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the other party interest at 3% above the Bank of England base lending rate from time to time being in force for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

### **Provisional Certificate**

7.—(1) Following any closure or partial closure of any of the strategic road network for the purposes of carrying out the specified works, National Highways will carry out a site inspection to satisfy itself that the trunk road is, in its opinion, safe for traffic and the undertaker must comply with any requirements of National Highways prior to reopening the trunk road.

(2) As soon as the undertaker considers that the provisional certificate may be properly issued it must apply to Highways England for the provisional certificate.

(3) Following an application for a provisional certificate, National Highways must as soon as reasonably practicable—

- (a) inspect the specified works; and
- (b) provide the undertaker with a written list of works that are required for the provisional certificate to be issued or confirmation that no further works are required for this purpose.

(4) When—

- (a) a stage 3 road safety audit for the specified works has been carried out and all recommendations raised including remedial works have (subject to any exceptions agreed) been approved by National Highways;
- (b) the specified works incorporating the approved remedial works under sub-paragraph (4)(a) and any further works notified to the undertaker pursuant to sub-paragraph 7(3)(b) have been completed to the satisfaction of National Highways;
- (c) the as built information has been provided to National Highways; and
- (d) the undertaker has paid the commuted sum to National Highways,

National Highways must issue the provisional certificate.

(5) The undertaker must submit a stage 4 road safety audits as required by and in line with the timescales stipulated in the road safety audit standard. The undertaker must comply with the findings of the stage 4 road safety audit and must pay all costs of and incidental to such and provide updated as-built information to National Highways.



## **Opening**

**8.** The undertaker must notify National Highways not less than 56 days in advance of the intended date of opening to the public of the specified works and the undertaker must notify National Highways of the actual date the specified works will be opened to the public within 14 days of that date.

## **Final condition survey**

**9.—(1)** The undertaker must, as soon as reasonably practicable after making its application for a provisional certificate pursuant to paragraph 7(2), arrange for the highways structures and assets that were the subject of the condition survey to be re-surveyed and must submit the re-survey to National Highways for its approval.

(2) If the re-survey carried out pursuant to sub-paragraph 9(1) indicates that any damage has been caused to a structure or asset, the undertaker must submit a scheme for remedial works in writing to National Highways for its approval in writing and the undertaker must carry out the remedial works at its own cost and in accordance with the scheme submitted.

(3) If the undertaker fails to carry out the remedial work in accordance with the approved scheme, National Highways may carry out the steps required of the undertaker and may recover any expenditure it reasonably incurs in so doing.

(4) National Highways may, at its discretion, at the same time as giving its approval to the re-survey pursuant to sub-paragraph 9(1) give notice in writing that National Highways will remedy any damage identified in the re-survey and National Highways may recover any expenditure it reasonably incurs in so doing.

(5) The undertaker must make available to National Highways upon request copies of any survey or inspection reports produced pursuant to any inspection or survey of any specified work following its completion that the undertaker may from time to time carry out.

## **Defects Period**

**10.—(1)** The undertaker must at its own expense remedy any defects in the specified works as are reasonably required by National Highways to be remedied during the defects period. All identified defects must be remedied in accordance with the following timescales—

- (a) in respect of matters of urgency, within 24 hours of receiving notification for the same (urgency to be determined at the absolute discretion of National Highways);
- (b) in respect of matters which National Highways considers to be serious defects or faults, within 14 days of receiving notification of the same; and
- (c) in respect of all other defects notified to the undertaker, within 4 weeks of receiving notification of the same.

(2) Following the issue of the provisional certificate National Highways has responsibility for routine maintenance of the highway save for any soft landscaping works which must be established and which must thereafter be maintained for a period of 3 years by and at the expense of the undertaker.

## **Final Certificate**

**11.—(1)** The undertaker must apply to National Highways for the final certificate no sooner than 12 months from the date of the provisional certificate.

(2) Following receipt of the application for the final certificate, National Highways must as soon as reasonably practicable—

- (a) inspect the specified works; and
- (b) provide the undertaker with a written list of any further works required to remedy or make good any defect or damage in the specified works or confirmation that no such works are required for this purpose.

(3) The undertaker must carry out such works notified to it pursuant to sub-paragraph 11(2)

(4) When National Highways is satisfied that any defects or damage arising from defects during the defects period and any defects notified to the undertaker pursuant to sub-paragraph 11(2) and any remedial works required as a result of the stage 4 road safety audit have been made good to the satisfaction of National Highways, National Highways must issue the final certificate.

(5) The undertaker must pay to National Highways within 28 days of demand the costs reasonably incurred by National Highways in identifying the defects and supervising and inspecting the undertaker's work to remedy the defects that it is required to remedy pursuant to these provisions.

## **Security**

**12.** The specified works must not commence until—

- (a) the undertaker procures that the specified works are secured by a bond from a bondsman first approved by National Highways in the agreed form between the undertaker and National Highways to indemnify National Highways against all losses, damages, costs or expenses arising from any breach of any one or more of the obligations of the undertaker in respect of the exercise of the powers under this Order and the specified works under the provisions of this Part of this Schedule provided that the maximum liability of the bond must not exceed the bond sum; and
- (b) the undertaker has provided the cash surety which may be utilised by National Highways in the event of the undertaker failing to meet its obligations to make payments under paragraph 6 or to carry out works the need for which arises from a breach of one or more of the obligations of the undertaker under the provisions of this Part of this Schedule.

## **Commuted sums**

**13.—**(1) National Highways must provide to the undertaker an estimate of the commuted sum, calculated in accordance with FS Guidance S278 Commuted Lump Sum Calculation Method dated 18 January 2010 or any successor guidance, prior to the commencement of the specified works.

(2) The undertaker must pay to National Highways the commuted sum prior to the issue of the provisional certificate.

## **Insurance**

**14.** Prior to the commencement of the specified works the undertaker must effect public liability insurance with an insurer in the minimum sum of £10,000,000.00 (ten million pounds) in respect of any one claim against any legal liability for damage loss or injury to any property or any person as a direct result of the execution or use of the specified works by the undertaker.

## **Indemnity**

**15.—**(1) The undertaker must indemnify National Highways from and against all costs, expenses, damages, losses and liabilities suffered by National Highways arising from or in connection with any claim, demand, action or proceedings (including but not limited to statutory claims) resulting from the construction, maintenance or use of the specified works or exercise of any power under this Order PROVIDED THAT—

- (a) National Highways notifies the undertaker upon receipt of any claim; and
- (b) National Highways , notifies the quantum of the claim to the undertaker in writing.

(2) Within 14 days of the receipt of the notification referred to in sub-paragraph (1)(b) the undertaker must pay to National Highways the amount specified as the quantum of such claim.

### **Maintenance of the specified works**

**16.**—(1) The undertaker must, prior to the commencement of any works of maintenance to the specified works, give National Highways 28 days' notice in writing of the date on which those works will start unless otherwise agreed by National Highways, acting reasonably.

(2) If, for the purposes of maintaining the specified works, the undertaker needs to occupy any road space, the undertaker must comply with National Highways' road space booking requirements and no maintenance of the specified works for which a road space booking is required shall commence without a road space booking having first been secured.

(3) The undertaker must comply with any requirements that National Highways may notify to the undertaker, such requirements to be notified to the undertaker not less than 7 days' in advance of the planned commencement date of the maintenance works.

(4) The provisions of paragraph 7 shall apply to the opening of any part of the strategic road network following occupation of any road space under this paragraph.

### **Land**

**17.**—(1) Following the issue of the final certificate pursuant to paragraph 11(4) National Highways may serve notice on the undertaker that it wishes to take a freehold transfer of land within the extent of strategic highway boundary which is not in the ownership of National Highways but has been acquired by the undertaker for the purposes of carrying out the specified works.

(2) If the undertaker receives notice under sub-paragraph (1) then the undertaker must cooperate in a freehold transfer of the land which is the subject of the notice and complete such transfer as soon as reasonably practicable at no cost to National Highways.

(3) The undertaker must not under the powers of this Order—

- (a) acquire or use land forming part of;
- (b) acquire new or existing rights over; or
- (c) seek to impose or extinguish any restrictive covenants over;

any of the strategic road network, or extinguish any existing rights of National Highways in respect of any third party property, except with the consent of National Highways.

(4) Where any land or interest is proposed to be acquired for the benefit of National Highways, the undertaker must, unless otherwise agreed by National Highways, exercise article 25 (*compulsory acquisition of land*) and article 24 (*compulsory acquisition of rights and imposition of restrictive covenants*) as applied by articles 26 (*application of the 1981 Act*) and article 27 (*modification of the 2017 Regulations*) of this Order to directly vest in National Highways any such land or interest.

### **Interaction with the Lower Thames Crossing**

**18.**—(1) The undertaker must use reasonable endeavours to avoid any conflict arising between the carrying out, maintenance and operation of the authorised development and the Lower Thames Crossing.

(2) The undertaker must co-operate with National Highways so as to reasonably ensure—

- (a) the co-ordination of construction programming, land assembly, and the carrying out of works in connection with the authorised development and the Lower Thames Crossing;
- (b) that, notwithstanding any provision of this Order and subject to reasonable notice being provided by National Highways, access to the Order land including secure working areas for the purposes of constructing the Lower Thames Crossing is not removed, prevented or prohibited by the undertaker for National Highways and its agents and/or contractors, including at Watling Street (A2) and Hall Road Interchange in the vicinity of plots 380, 381 and 382 of the Land Plans.

(3) Without limitation to the generality of sub-paragraphs (1) and (2)—

(a) the undertaker may not propose any off-site mitigation within the Lower Thames Crossing's Order Limits or within any land required for the purposes of the Lower Thames Crossing without the consent of National Highways.

(4) [Article 29(10) of this Order does not apply to any nationally significant infrastructure project proposed by National Highways, including the Lower Thames Crossing.]

(5) In this paragraph "Lower Thames Crossing" means the project which comprises a new road connecting Kent, Thurrock and Essex through a tunnel beneath the river Thames as well as improvements to the M25, A2 and A13, which is being promoted by National Highways and is proposed to be consented under section 22 of the 2008 Act.

### **Expert Determination**

**19.**—(1) Article 46 (*arbitration*) of the Order does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
- (c) issue a decision within 42 days of receipt of the submissions under sub-paragraph (b); and
- (d) give reasons for the decision.

(5) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 46 (*arbitration*).

(6) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

## **SCHEDULE 12**

Articles 2, 3 and 4

### **DEEMED MARINE LICENCE**

#### **PART 1**

#### **INTRODUCTORY**

### **Interpretation**

**1.**—(1) In this licence—

"the 2009 Act" means the Marine and Coastal Access Act 2009(a);

"Bell Wharf" means the wharf existing in the river Thames at the date of this Order coming into force, marked as plot numbers 211, 212 and 213 on sheet 3 of the lands plans;

---

(a) 2009 c. 23.

“business day” means a day other than a Saturday or Sunday, which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971(a);

“commence” means beginning to carry out any part of a licensable marine activity, and “commenced” and “commencement” is construed accordingly;

“condition” means those conditions in Part 4 of this Schedule;

“the Environmental Statement” means the document listed in Schedule 15 (documents to be certified) and certified by the Secretary of State as the environmental statement for the purposes of this Order;

“licensed marine activity” means any activity described in Part 2 of this licence;

“maintain” includes inspect, repair, adjust, refurbish, to the extent that such activities have been assessed in the Environmental Statement and “maintenance” and “maintaining” are to be construed accordingly;

“the marine area” has the meaning given to ‘UK marine area’ in section 42 of the 2009 Act;

“mean high water springs” means the average of high water heights occurring at the time of spring tides;

“MMO” means the Marine Management Organisation;

“MMO local office” means the office whose address is given at paragraph 2(1)(b);

“the Order” means the London Resort Development Consent Order 202[ ](b);

“the River” means so much of the river Thames and the Thames estuary, as is within the UK marine area;

“scour protection” means measures to prevent loss of riverbed and intertidal area around any marine structure placed in or on the riverbed or intertidal area by use of protective aprons, mattresses, or rock and gravel placement;

“SSSI” means site of special scientific interest as defined in the Wildlife and Countryside Act 1981 (as amended);

“the Tilbury Riverside Terminal” means the terminal existing in the river Thames at the date of this Order coming into force, shown as plot numbers 328, 329 and 332 on sheet 8 of the land plans;

“the undertaker” means London Resort Company Holdings Limited, company number 7625574, registered at 20 Berkeley Square, London W1J 6EQ or any other person who has the benefit of this Order;

“White’s Jetty” means the existing jetty in the river Thames at the date of this Order coming into force, marked as plot number 218 on sheet 3 of the lands plans.

(2) Unless otherwise specified, all geographical co-ordinates given in this licence are in latitude and longitude degrees and minutes to two decimal places.

## Contact Details

2.—(1) The main points of contact with the MMO and the addresses for email and postal returns are as follows—

- (a) Marine Management Organisation, Marine Licensing Team, Lancaster House, Hampshire Court, Newcastle upon Tyne, NE4 7YH; Tel: 0300 123 1032; Fax: 0191 376 2681; Email: marine.consents@marinemangement.org.uk or such replacement contact details as are notified to the undertaker in writing by the MMO; and
- (b) Marine Management Organisation, MMO Lowestoft, Pakefield Road, Lowestoft, Suffolk NR33 0HT; Tel: 01502 573 149 or 01502 572 769; Email:

---

(a) 1971 c. 80.

(b) S.I. 202[ ]/[ ].

lowestoft@marinemanagement.org.uk or such replacement contact details as are notified to the undertaker in writing by the MMO.

(2) Unless otherwise notified to the undertaker in writing by the MMO, all notices required by this licence to be sent by the undertaker to the MMO must be sent using the MMO's Marine Casement Management System (MCMS) web portal.

(3) The contact details for the MMO Marine Pollution Response Team are- Tel (during office hours): 0300 200 2023; Tel (outside office hours): 07770 977 825 or 0345 051 8486; Email: dispersants@marinemanagement.org.uk or such replacement contact details as are notified to the undertaker in writing by the MMO.

## PART 2

### LICENSED MARINE ACTIVITIES

**1.** Subject to the licence conditions in Part 4 of this licence, this licence authorises the undertaker to carry out any licensable marine activities under sections 66(1), 66(4) and 66(7) of the 2009 Act which involve the construction, alteration or improvement of any works, including dredging or scour protection works, in or over the River or on or under the bed of the River and which—

- (a) form part of, or are related to, the authorised development; and
- (b) are not exempt from requiring a marine licence by virtue of any provision made under section 74 of the 2009 Act.

**2.** The activities set out in this Part may be carried out by the undertaker as if licensed under the 2009 Act.

**3.** In this licence, “licensed marine activity” means the construction, maintenance and operation of those parts of each of the following numbered works within the limits of deviation to the extent that such works constitute licensable marine activities, as shown on the works plans—

- (a) within the limit of deviation for Work No. 15, the construction of a floating pontoon with linkspan on the river Thames on the south-western side of the Swanscombe peninsula comprising—
  - (i) the construction of associated restraint structures;
  - (ii) installation of the floating pontoon; and
  - (iii) the installation of a linkspan bridge between the floating pontoon and the shoreline;
- (b) within the limit of deviation for Work No. 16, construction of a floating pontoon with linkspan on the north side of the river Thames comprising—
  - (i) the construction of associated restraint structures;
  - (ii) the installation of the floating pontoon; and
  - (iii) the installation of a linkspan bridge between the floating pontoon and the existing Tilbury Riverside Terminal;
- (c) within the limit of deviation for Work No. 15, alteration works to Bell Wharf, which may include—
  - (i) new casting of reinforced concrete structures;
  - (ii) shot-blasting, plating and painting;
  - (iii) the installation of additional piles and superstructure to strengthen the structures; and
  - (iv) the construction of a temporary coffer dam to enable dewatering, if required;
- (d) the construction of a number of outfall structures including—
  - (i) surface water outfalls at a number of locations around the Swanscombe Peninsula;
  - (ii) a surface outfall within the existing river wall at Tilbury Riverside Terminal;

- (iii) within the limit of deviation for Work No. 14c, an outfall from the new waste water treatment facility on the Swanscombe Peninsula, if required;
  - (iv) a new treated leachate outfall from the leachate treatment facility, if required;
  - (v) each outfall will incorporate appropriate tidal flap valves and scour protection; and
  - (vi) the construction of a temporary coffer dam to enable dewatering, if required;
- (e) the creation of the Saltmarsh habitat comprising—
- (i) the excavation of land above the current Mean High Water Spring line to create a series of embayments, the excavation works to be undertaken from land; and
  - (ii) the creation of inlets between the existing saltmarsh habitats and the new embayments to allow tidal flow in and out of saltmarsh;
- (f) either within the limit of deviation for Work No. 14a, the construction of a roll on roll off facility on the river Thames on the north-western side of the Swanscombe Peninsula comprising—
- (i) the construction of associated restraint structures;
  - (ii) installation of the floating pontoon;
  - (iii) installation of the linkspan; and
  - (iv) the construction of a fixed bridge structure between the linkspan and the shoreline; or
- (g) within the limit of deviation for Work No. 14a, alteration works to refurbish and repair White's Jetty, which may include—
- (i) new casting of reinforced concrete structures;
  - (ii) shot-blasting, plating and painting;
  - (iii) the installation of additional piles and superstructure to strengthen the structures; and
  - (iv) the construction of a temporary coffer dam to enable dewatering, if required; or
- (h) within the limit of deviation for Work No. 15, dredging works at Bell Wharf, which may include, a capital dredge in the area immediately in front of Bell Wharf, to allow vessel access throughout the tidal cycle;
- (i) within the limits of deviation for Works Nos. 14a, 14c, 15 and 16, such other works as may be necessary or convenient for the purposes of, or in connection with or in consequence of, the construction, maintenance, operation or use of the authorised development, namely—
- (i) works to divert, remove or replace apparatus, including mains, sewers, drains, pipes, conduits, cables, electrical substations and electrical lines; and
  - (ii) landscaping and other works to mitigate any adverse effect of the construction, maintenance and operation of the works or to benefit or protect any person or premises affected by the construction, maintenance and operation of the works; and
  - (iii) installation of berthing and mooring facilities, ladders, buoys, bollards, dolphins, fenders, rubbing strips and fender panels, fender units and pontoons.
- (2) Only one of licensable marine activities (1)(f), (g) or (h) may be constructed.

## PART 3

### ENFORCEMENT

Any breach of this licence does not constitute a breach of the Order but is subject to the enforcement regime in Chapter 3 of Part 4 of the 2009 Act.

## PART 4

### CONDITIONS

#### **Notification of commencement and completion of licensed activities**

1.—(1) The MMO local office must be notified of the commencement of the first instance of any licensed activity at least 5 working days prior to the commencement of that licensed activity.

(2) The MMO local office must be notified of the completion of the licensed activities within 10 working days of such completion.

(3) The Source Data Receipt team (UK Hydrographic Office, Taunton, Somerset, TA1 2DN; sdr@ukho.gov.uk) must be notified of the completion of the licensed activities within 2 weeks of the date of completion of the licensed activities.

(4) A copy of the notification required under sub-paragraph (3) must be sent to the MMO Marine Licensing Team within 1 week of issue.

(5) A notice to mariners must be issued at least 10 working days prior to the commencement of the licensed activities, or any part of them, advising of the start date and the expected vessel routes from the local construction ports to the relevant location.

(6) Except in case of emergency, the MMO local office must be notified of the date of commencement and anticipated duration of any temporary closure of any part of the River under the powers conferred by articles 31(13) (temporary use of land for carrying out the authorised development) or 39(2)(e) (temporary closure of, and works in, the river Thames) of the Order at least 10 working days prior to any such temporary closure.

#### **Construction method statement**

2.—(1) A construction method statement must be submitted for approval by the MMO, at least 13 weeks prior to the commencement of any construction activity.

(2) The construction method statement must include the following details—

- (a) the detailed construction methodology to be employed in carrying out the construction activity; and
- (b) a programme of works including timings and durations, method of delivery of material to site and plant to be used during the works.

(3) The construction activity must not commence until the MMO has approved in writing the submitted construction method statement.

(4) The construction activity must be carried out in accordance with the approved construction method statement, unless otherwise agreed in writing by the MMO.

#### **Noise registry**

3. Where impact piling is required as part of a construction method statement approved by the MMO under condition 8—

- (a) prior to the commencement of a licensed activity in the River which involves impact pile driving—
  - (i) details must be submitted of the expected location, start and end dates of impact pile driving to the Marine Noise Registry in order to satisfy the forward look requirements of the Marine Noise Registry; and
  - (ii) copies of the notifications required under sub-paragraph (i) must be sent to the MMO Marine Licensing Team within 5 days of the date of submission of the details required under sub-paragraph (i); and
- (b) within 12 weeks of completion of a licensed activity in the River which involves impact pile driving—



- (i) details must be submitted of the actual location, start and end dates of impact pile driving to the Marine Noise Registry in order to satisfy the close out requirements of the Marine Noise Registry; and
- (ii) copies must be sent of the notifications required under sub-paragraph (i) within 5 days of the date of submission of the details required under sub-paragraph (i).

#### **Cofferdam dewatering and excavation method statement**

4.—(1) A method statement for the dewatering and excavation of the in-river cofferdams forming parts of the construction activities described at paragraph 5(c)(iv), 5(d)(vi) and 5(g)(iv) of this licence must be submitted for approval by the MMO, at least 13 weeks prior to the commencement of any such cofferdam dewatering and excavation construction activity.

(2) The cofferdam dewatering and excavation method statement must include the following details in respect of the cofferdam dewatering and excavation construction activity—

- (a) the detailed dewatering methodology to be employed;
- (b) the detailed methodology for the excavation and subsequent management of the solid material removed;
- (c) a programme of works including anticipated timings, durations and plant to be used; and
- (d) provision that no excavated materials are to be disposed of at sea or in other waters otherwise than in accordance with a marine licence.

(3) Cofferdam dewatering and excavation construction activity must not commence until the MMO has approved in writing the submitted cofferdam dewatering and excavation method statement for that cofferdam dewatering and excavation construction activity.

(4) Any cofferdam dewatering and excavation construction must be carried out in accordance with the relevant approved cofferdam dewatering and excavation construction activity method statement, unless otherwise agreed in writing by the MMO.

#### **Vessels**

5.—(1) The MMO Marine Licensing Team must be notified of any vessel being used to carry on any licensed activities.

(2) A notification under sub-paragraph (1) must—

- (a) be received by the MMO Marine Licensing Team no less than 24 hours before the commencement of the relevant licensed activity;
- (b) include the name of the master of the vessel, the vessel type, the vessel IMO number and details of the vessel owner or operating company.

(3) A copy of this licence and any subsequent revisions or amendments must have been read and understood by the master of any vessel being used to carry on any licensed activities, and a copy of this licence must be held on board any such vessel.

#### **Marine pollution contingency plan**

6.—(1) A marine pollution contingency plan must be submitted for approval by the MMO at least 13 weeks prior to the commencement of the first licensed activity, including any construction activity.

(2) The marine pollution contingency plan must set out the assessment of the likely risks which could arise as a result of a spill or collision during the carrying out of the licensed activities and the methods and procedures to be put in place to address those risks.

(3) The licensed activities must not commence until the MMO has approved in writing the submitted marine pollution contingency plan.

(4) The licensed activities must be carried out in accordance with the approved marine pollution contingency plan, unless otherwise agreed in writing by the MMO.

### **Piling techniques**

7.—(1) Where any construction activity involving piling is carried out within the River, the requirements set out in sub-paragraphs (2) to (5) must be complied with.

(2) Vibro piling techniques are to be used as standard, with impact piling only used if required to drive a pile to its design depth.

(3) Where impact piling is necessary, soft-start procedures are to be used to ensure incremental increase in pile power, over a period of not less than 20 minutes, until full operational piling power is achieved.

(4) Sufficient break periods in piling activities must be provided (with a minimum of one break per day, lasting at least one hour in duration) to allow fish to pass through the affected area.

(5) Where impact piling ceases for a period longer than 10 minutes, the soft-start procedure must be repeated.

### **Concrete and cement**

8.—(1) Waste concrete, slurry or wash water from concrete or cement works must not be discharged, intentionally or unintentionally into the River. Concrete and cement mixing and washing areas must be contained and sited at least 10 metres from any watercourse or surface water drains to minimise the risk of run off entering the River.

(2) If concrete is to be sprayed, suitable protective sheeting must be provided to prevent rebounded or windblown concrete from entering the water environment.

(3) Rebounded concrete material must be cleared away before protective sheeting is removed.

### **Coatings and treatments**

9. Any coatings and any treatments must be suitable for use in the marine environment and are used in accordance with guidelines approved—

- (a) by the Health and Safety Executive;
- (b) by the Environment Agency; or
- (c) by both of the foregoing bodies.

### **Spills, etc.**

10.—(1) Fuels, oils, chemicals and other substances must be stored, handled, transported and used so as to prevent releases into the marine environment, including bunding of 110% of the total volume of all reservoirs and containers.

(2) Any spill of oil, fuel or chemicals into the marine area must be reported to the MMO Marine Pollution Response Team within 12 hours of the spill occurring.

(3) All waste must be stored in designated areas that are isolated from surface water drains and open water and are bunded to contain any spillage.

### **Dropped objects**

11.—(1) All dropped objects must be reported to the MMO Marine Licensing Team using the Dropped Object Procedure Form (or such substitute notification procedure communicated in writing by the MMO) as soon as reasonably practicable and in any event within 24 hours of the incident becoming apparent.

(2) On receipt of the Dropped Object Procedure Form or substitute notification, the MMO may require relevant surveys to be carried out (such as side-scan sonar), and the MMO may require obstructions to be removed from the seabed, if reasonable to do so.

### **Post construction**

12. All equipment, temporary structures, waste and debris associated with the construction activities within the River must be removed within 4 weeks of completion of the final construction activity.

13.—(1) In the event that the licence holder wishes to vary this licence, it must inform the MMO at the earliest opportunity and request a variation.

(2) No licensed activity is to be carried out contrary to the provisions of this licence until a variation to the licence has been approved by the MMO pursuant to its powers under section 72(3) of the 2009 Act.

## **PART 5**

### **PROCEDURE FOR THE DISCHARGE OF CONDITIONS**

#### **Meaning of “return”**

1. In this Part, “return” means a submission for approval of the MMO of any method statement or plan under paragraphs 8, 10 and 12.

#### **Further information regarding return**

2.—(1) The MMO may request in writing such further information as is necessary to enable the MMO to consider the return.

(2) If the MMO does not make a request under sub-paragraph (1) within 20 business days of the day immediately following that on which the application is received by the MMO, it is deemed to have sufficient information to consider the application and is not entitled to request further information after this date without prior agreement.

#### **Determination of return**

3.—(1) In determining the return the MMO may have regard to—

- (a) the return and any supporting information or documentation;
- (b) any further information provided in accordance with paragraph 21; and
- (c) such matters as the MMO reasonably thinks are relevant.

(2) Having considered the return the MMO must—

- (a) grant the return unconditionally; or
- (b) grant the return subject to conditions as the MMO thinks fit; or
- (c) refuse the return.

#### **Notice of determination**

4.—(1) Subject to sub-paragraph (2) or (3), the MMO must give notice of the determination of the application within 6 weeks of the day immediately following that on which the return is received by the MMO or as soon as reasonably practicable after that date.

(2) Where the MMO has made a request under paragraph 21, the MMO must give notice to the licence holder of the determination of the return no later than 6 weeks of the day immediately following that on which the further information is received by the MMO.

(3) Where the MMO determines it is not reasonably practicable to make a determination pursuant to sub-paragraph (1) or (2) in 6 weeks, it must notify the licence holder as soon as reasonably practicable and provide confirmation in writing of the intended determination date.

(4) Where the MMO refuses the return the refusal notice must state the reasons for the refusal.

## Arbitration

5. Regulations made under section 73 of the Marine and Coastal Access Act 2009 apply to any difference under any provision of this licence and article 45 (arbitration) does not apply.

## SCHEDULE 13

Article 41

### TREES SUBJECT TO TREE PRESERVATION ORDERS

(1) <i>Type of tree</i>	(2) <i>Location</i>	(3) <i>Work to be carried out</i>	(4) <i>TPO reference</i>
Area order (A1)	The Thrift between Bean Lane, Sandy Lane and Canada Heights, Farningham Woods and Button Road, Swanley, Canada Heights, Bean, Kent DA2 8AF	Work No. 4	75/00004/TPO

## SCHEDULE 14

Article 50

### LONDON RESORT BYELAWS

#### PART 1

#### PRELIMINARY

#### Citation

1. These byelaws may be cited as the London Resort Byelaws 202[ ] and are deemed to have been made by the undertaker under article 50(1) (byelaws) of the London Resort Development Consent Order 202[ ] and confirmed by the Secretary of State as provided for by article 50(2) of that Order.

2.—(1) In these byelaws unless the context otherwise requires—

“authorised person” means—

(a) a person acting in the course of that person’s duties who—

(i) is an employee, agent, contractor or sub-contractor of the undertaker;

(ii) is an officer, employee or agent of a relevant planning authority; or

(iii) is authorised by the undertaker to exercise one or more of its functions under the London Resort Development Consent Order 202[ ]; or

(b) a constable, Police Community Support Officer, an officer of the Health and Safety Executive, a person authorised for the purposes of section 44 (powers of fire-fighters etc. in an emergency etc.) of the Fire and Rescue Services Act 2004(a), a person accredited by or under section 41 (accreditation under community safety accreditation schemes) of the Police Reform Act 2002(b);

“the byelaws” means these byelaws;

(a) 2004 c. 21.

(b) 2002 c. 30.

“the byelaws area” means the areas shown as Works Nos. 3a, 3b, 4, 9a, 9b, 11, 12, 13, 14a, 14b, 14c, 14d, 15, 16, 17a, 17b, 18a, 18b, 19a, 19b, 19c, 22, 23, 24a, 24b, 24c and 25 on the works plans;

“notice” includes a sign, signal and a digital or other display, and in appropriate circumstances, an audible announcement;

“tobacco produce” has the same meaning as given in section 1 of the Tobacco Products Duty Act 1979 and includes a vaporiser.

(2) The Interpretation Act 1978(a) applies to the interpretation of these byelaws as it applies to the interpretation of an Act of Parliament.

### **Application of the byelaws**

3. These byelaws apply to the byelaws area.

## **PART 2 RESTRICTIONS**

### **General safety**

1.—(1) A person must not intentionally and without authority do, cause or permit to be done or omit to do anything tending to cause—

- (a) an encumbrance, pollution or fouling of any water or foreshore of any part of the byelaw area;
- (b) a danger to life or health within the byelaw area; or
- (c) any nuisance.

(2) A person must not operate, obstruct, interfere with or stop any equipment in the byelaw area except—

- (a) by means of any of the controls intended for use by that person; or
- (b) in an emergency and by means of equipment on or near which is a notice indicating that it is to be used in an emergency.

(3) A person must not place, throw, drop or trail anything which is capable of injuring or endangering any person or damaging any property in the byelaw area.

(4) A person must not—

- (a) obstruct or in any way interfere with the safe operation of the byelaw area;
- (b) without reasonable cause, activate, use or interfere with any emergency, safety or communications equipment within the byelaw area.

### **Restrictions on conduct in the area**

2. A person must not in the byelaw area—

- (a) enter, attempt to enter or remain in any part of the byelaw area where there is a notice prohibiting or restricting access;
- (b) climb upon, remove or damage (whether deliberately or negligently) any infrastructure or equipment;
- (c) remove, move or otherwise interfere with any machinery, apparatus, tools or other things in use or intended for use in connection with the byelaw;
- (d) post a bill, placard or notice on any infrastructure or equipment;
- (e) write, print, draw or paint on or cut, mark or stamp any infrastructure or equipment;

---

(a) 1978 c. 30.

- (f) fix anything to any infrastructure or equipment;
- (g) spit, urinate or defecate;
- (h) leave litter or waste;
- (i) move, alter, deface or otherwise interfere with any notice belonging to the undertaker which is exhibited or placed in the byelaw area;
- (j) loiter if asked to leave by an authorised person;
- (k) obstruct an authorised person acting in the course of their duties;
- (l) smoke or suck a tobacco product or carry a tobacco product except at locations designated as smoking areas where notices are displayed permitting the possession of such lights or devices;
- (m) be in possession of or carry any item that is alight;
- (n) be in an intoxicated condition;
- (o) operate a music or sound system at such volume as to cause nuisance to others;
- (p) unnecessarily, inappropriately or excessively use any horn, klaxon, lights or other loud or bright object;
- (q) sell or offer for sale any goods or services;
- (r) distribute, post or leave any circulars, leaflets or advertising matter;
- (s) undertake personal solicitation;
- (t) organise any general meeting; or
- (u) without prejudice to any other requirement of these byelaws, act in any way as to cause a nuisance.

## PART 3

### ENFORCEMENT

#### **Compliance with instructions, etc.**

**1.**—(1) Contravention of any of these byelaws is punishable with a fine not exceeding level 2 on the standard scale.

(2) A person reasonably suspected by an authorised person of breaching or attempting to breach a byelaw must immediately give that person's name and address when requested to do so by an authorised person.

(3) The authorised person requesting details under byelaw (1) must state the nature of the suspected breach of the byelaw in general terms at the time of the request.

(4) A person in the byelaws area must carry out the reasonable instructions of an authorised person or the requirements of a notice displayed by the undertaker.

(5) A person acting in compliance with the instructions of an authorised person does not commit a breach of the byelaw which otherwise prohibits the act.

(6) A person is not subject to a penalty for breach of a byelaw by disobeying a notice unless it is proved to the satisfaction of the Court before which the complaint is laid that the notice referred to in the particular byelaw was displayed.

#### **Identification of authorised persons**

**2.** An authorised person who is exercising any power conferred on an authorised person by any of the byelaws must produce a form of identification which includes the name of the authorised person's employer and a means of identifying the authorised person, when requested to do so.

### Breaches by authorised persons

3. An authorised person acting in the course of the authorised person's duties is not liable for a breach of a byelaw.

### Attempted breach

4.—(1) A person who attempts to breach a byelaw is liable to the same penalty as a person who breaches a byelaw.

(2) An authorised person may prevent a person from gaining access to the byelaw area if the appointed person has reasonable cause to believe that the person is contravening, or will contravene if allowed to proceed, any of the byelaws.

## SCHEDULE 15

Article 17

### TRAFFIC REGULATION

#### PART 1

#### CLEARWAYS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Description</i>	<i>(3)</i> <i>Status</i>	<i>(4)</i> <i>Event</i>
Dartford Borough Council	London Resort Access Road between points LHC1 and LHC2 shown on Sheet 5 of the traffic regulation order plans	Clearway	Opening of the London Resort Access Road to vehicular traffic

#### PART 2

#### PROHIBITED MOVEMENTS

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Length</i>	<i>(3)</i> <i>Description</i>
Dartford Borough Council	Northbound from point PVR1 shown on Sheet 2 of the traffic regulation order plans	No vehicular traffic
Dartford Borough Council	Between points NRT1 and NRT2 shown on Sheet 5 of the traffic regulation order plans	No right turn from the minor access onto the A2260
Dartford Borough Council	Between points NRT3 and NRT4 shown on Sheet 5 of the traffic regulation order plans	No right turn from the A2260 onto the minor access

## SCHEDULE 16

Article 2

### DOCUMENTS TO BE CERTIFIED

The reference to a document in the table with a numbered regulation is a reference to the regulation as numbered in the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.

<i>(1)</i> <i>Document</i>	<i>(2)</i> <i>Document Reference</i>	<i>(3)</i> <i>Revision</i>
Location plan - Regulation 5(2)(o)	Application Document 2.1	0
Land plans - Regulation 5(2)(i)(i), (ii) & (iii)	Application Document 2.2	0
Crown Land Plans - Regulation 5(2)(n)	Application Document 2.3	0
Works Plans - Regulation 5(2)(j)	Application Document 2.5	0
Access, Rights of Way and Public Rights of Navigation Plans - Regulation 5(2)(k)	Application Document 2.6	0
Highways Plans - Highways: Constraints - Regulation 5(2)(o), (p) & Regulation 6(2)	Application Document 2.11	0
Highways Plans - Highways: General Arrangement - Regulation 5(2)(o), (p) & Regulation 6(2)	Application Document 2.12	0
Highways Plans - Highways: Surface Finishes - Regulation 5(2)(o), (p) & Regulation 6(2)	Application Document 2.13	0
Highways Plans - Highways: Proposed Contours, Levels & Alignment Changes - Regulation 5(2)(o), (p) & Regulation 6(2)	Application Document 2.14	0
Highway Plans - Highways: Drainage Layout - Regulation 5(2)(o), (p) & Regulation 6(2)	Application Document 2.15	0
Trees and Hedgerows Which May Be Removed or May Be Affected Plans - Regulation 5(2)(o)	Application Document 2.16	0
Drainage Strategy Plans - Regulation 5(2)(o)	Application Document 2.17	0
Traffic Regulation Order Plans	Application Document 2.18	0
Parameters Plans - Regulation 5(2)(o)	Application Document 2.19	0
Book of Reference - Regulation 5(2)(d)	Application Document 4.3	0
Environmental Statement - Main Report - Regulation 5(2)(a)	Application Document 6.1	00
Environmental Statement - Appendices - Regulation 5(2)(a)	Application Document 6.2	00
Environmental Statement - Figures - Regulation 5(2)(a)	Application Document 6.3	00
Outline Construction Environmental Management Plan - Regulation 5(2)(q)	Application Document 6.2.3.2	00
Draft Employment and Skills Strategy - Regulation 5(2)(o)	Application Document 6.2.7.7	00
Draft Construction Traffic Management Plan - Regulation 5(2)(o)	Application Document 6.2.9.2	00
Draft Navigational Risk Assessment - Regulation 5(2)(o)	Application Document 6.2.10.1	00
Outline landscape management plan - Regulation 5(2)(o)	Application Document 6.2.11.8	00
Outline biosecurity plan - Regulation 5(2)(o)	Application Document 6.2.13.9	00



Draft Historic Environmental Framework and Mitigation Strategy - Regulation 5(2)(o)	Application Document 6.2.14.9	00
Draft Contaminated Land Management Strategy - Regulation 5(2)(o)	Application Document 6.2.18.9	00
Outline Operational Waste Management Strategy - Regulation 5(2)(o)	Application Document 6.2.19.1	00
Outline Construction Waste Management Plan - Regulation 5(2)(o)	Application Document 6.2.19.2	00
Draft Energy Strategy - Regulation 5(2)(o)	Application Document 6.2.20.3	00
Design and Access Statement - Regulation 5(2)(o)	Application Document 7.1	00
Design Code - Regulation 5(2)(o)	Application Document 7.2	00

### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order authorises the London Resort Company Holdings Limited (referred to in this Order as the undertaker) to construct a nationally significant visitor attraction and leisure resort and to carry out all associated works. The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

The Order also grants a deemed marine licence for the marine licensable activities, being the deposit of substances and articles and the carrying out of works, involved in the construction of the authorised development. The deemed marine licence imposes conditions in connection with the deposits and works for which it grants consent.

A copy of the Order plans, the book of reference and other documents mentioned in this Order and certified in accordance with article 44 of this Order (certification of plans, etc.) may be inspected free of charge during normal working hours at [ ].